

Approved: 3-31-93  
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 March 15, 1993 in Room 526-S of the Capitol.

All members were present except: Senator Langworthy, Excused

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

Others attending: See attached list

Conferees appearing before the committee:

Committee discussion on:  
**SB 397** - Hospice licensure act.

The Chair distributed copies of statutes pertaining to credentialing and a letter from Cathy Rooney, Director of Health Occupations Credentialing, KDHE, with information regarding **SB 397** and its applicability to the Credentialing Review Program. Ms. Rooney's letter pointed out that a review through the Credentialing Review Program is not warranted or applicable in this case since the bill seeks to license hospice facilities, not a specific type of health care personnel. (Attachments 1 and 2)

It was pointed out during Committee discussion that the professional paid staff who provide services within the hospice have licenses. A policy question was raised by a member of the Committee that a technical review would be in the best interest of the public. Another member expressed concern that licensure of hospices would lead to rules and regulations, and that would lead to health care costs, and those costs would be passed on to the consumer. It was noted there is no federal or state requirements that hospices be licensed, and some services would be shut out and removed from the centrally administered part of the operation, administrative costs incurred, etc. It was pointed out by another member that the hospices that contacted her, both medicare certified and those not, are in favor of being licensed so they can be a part of an organization that provides a base standard of care.

Staff gave review of a balloon of **SB 397** which was distributed to the Committee outlining proposed changes. (Attachment 3)

It was pointed out by a member that medicare certification allows that person receiving hospice care to be reimbursed for the services. If the hospice is not medicare certified, then the person receiving care cannot be reimbursed for the services. The licensing process is just insuring that no one holds themselves out to be a hospice that is not providing hospice-like service. Staff reviewed page 3, line 35, the language as introduced "hospice- like care" made the protection for those licensed much broader than the balloon language.

It was noted that if hospices were licensed, medicare reimbursement would not be automatic, since the hospice would still have to go through the medicare certification process. The standards in the legislation and medicare certification are the same. There are currently 18 hospices out of 40 that are medicare certified, and 25 out of 40 hospices will be medicare certified by the end of the year. Hospices are required to be licensed under home-health care. There are 17 hospices out of 40 currently covered by home-health licensure.

Staff pointed out that those hospices that choose not to be licensed under the balloon of **SB 397** would not be able to use the name "hospice" unless they obtain a provisional license which would expire January 1, 1996, and then come up to the standards required by the act. They could continue to operate under another name. Concerns were expressed by a member that another "agency" would be created under this bill, and that volunteers would not be "volunteering" as they are now. There are currently 5 to 1 volunteers to paid staff under the present hospice system.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON PUBLIC HEALTH AND WELFARE, Room 526-S  
Statehouse, at 10:00 a.m. on March 15, 1993.

Many members expressed their concerns, experiences and perspectives of hospices in their community. Staff brought attention to the term "medical director" in the bill, and if a hospice does not have an employed "medical director," that hospice could still obtain certification. In regard to "licensed home-health agency," there is no exemption for services provided under SB 397, and an exemption would need to be provided to prevent that dual requirement. An agency cannot make necessary recommendations in rules and regulations when there is no statutory authorization to do so. The statute should be amended to provide the agency the authority or discretion to do that, otherwise it is dual licensure. One of the reasons of wanting a dual license would be in order to serve AIDS patients at home, because care for AIDS patients at a hospice is very costly, -- under home-health, hospices can receive minimal reimbursement.

The Chair announced there are many questions that needed to be resolved before further action can be taken on SB 397.

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

The next meeting is scheduled for March 16, 1993.

GUEST LIST

COMMITTEE: SENATE PUBLIC HEALTH AND WELFARE

DATE: 3-15-93

[illegible]

**History:** L. 1986, ch. 229, § 7; July 1.

**Law Review and Bar Journal References:**

"Malpractice '87: Status and Solutions," M. Martin Halley, M.D., J.D., 88, No. 9, Kan.Med. 261, 263, 264 (1987).

**65-4927. Failure to report; remedies; immunity from civil liability.** (a) No person or entity shall be subject to liability in a civil action for failure to report as required by K.S.A. 65-4923 or 65-4924.

(b) The license of a person or entity required to report under subsection (a) of K.S.A. 65-4923 may be revoked, suspended or limited, or the licensee subjected to public or private censure, by the appropriate state licensing agency if the licensee is found, pursuant to the Kansas administrative procedure act, to have willfully and knowingly failed to make any report as required by K.S.A. 65-4923 or 65-4924.

(c) Willful and knowing failure to make a report required by K.S.A. 65-4923 or 65-4924 is a class C misdemeanor.

(d) In no event shall a medical care facility or a professional society or organization be liable in damages for the alleged failure to properly investigate or act upon any report made pursuant to K.S.A. 65-4923.

**History:** L. 1986, ch. 229, § 8; July 1.

**65-4928. Employer retribution for reporting; prohibition; remedy.** (a) No employer shall discharge or otherwise discriminate against any employee for making any report pursuant to K.S.A. 65-4923 or 65-4924.

(b) Any employer who violates the provisions of subsection (a) shall be liable to the aggrieved employee for damages for any wages or other benefits lost due to the discharge or discrimination plus a civil penalty in an amount not exceeding the amount of such damages. Such damages and civil penalty shall be recoverable in an individual action brought by the aggrieved employee. If the aggrieved employee substantially prevails on any of the allegations contained in the pleadings in an action allowed by this section, the court, in its discretion, may allow the employee reasonable attorney fees as part of the costs.

**History:** L. 1986, ch. 229, § 9; July 1.

**65-4929. Purpose of risk management programs; status of entities conducting programs; antitrust immunity.** (a) The legislature of the state of Kansas recognizes the importance and necessity of providing and regulating certain aspects of health care delivery in order

to protect the public's general health, safety and welfare. Implementation of risk management plans and reporting systems as required by K.S.A. 65-4922, 65-4923 and 65-4924 and peer review pursuant to K.S.A. 65-4915 and amendments thereto effectuate this policy.

(b) Health care providers and review, executive or impaired provider committees performing their duties under K.S.A. 65-4922, 65-4923 and 65-4924 and peer review pursuant to K.S.A. 65-4915 and amendments thereto for the purposes expressed in subsection (a) and 65-4915 and amendments thereto shall be considered to be state officers engaged in a discretionary function and all immunity of the state shall be extended to such health care providers and committees, including that from the federal and state antitrust laws.

(c) Nothing in this section shall be construed to require health care providers or review, executive or impaired provider committees to be subject to or comply with any other law relating to or regulating state agencies, officers or employees.

**History:** L. 1986, ch. 229, § 10; July 1.

**65-4930. Act supplemental to existing law.** The provisions of K.S.A. 65-4921 through 65-4929 shall be supplemental to K.S.A. 65-28,121, 65-28,122, 65-4216 and 65-4909, and amendments to such sections, and shall not be construed to repeal or modify those sections.

**History:** L. 1986, ch. 229, § 11; L. 1988, ch. 236, § 4; July 1.

#### Article 50.—CREDENTIALING

##### Attorney General's Opinions:

Practice of optometry; opticians fitting contact lenses. 88-169.

**65-5001. Credentialing health care personnel; definitions.** As used in this act unless the context requires otherwise, the following words and phrases shall have the meanings respectively ascribed to them herein:

(a) "Credentialing" or "credentialed" means the formal recognition of professional or technical competence through the process of registration, licensure or other statutory regulation.

(b) "Certification" means the process by which a nongovernmental agency or association or the federal government grants recognition to an individual who has met certain predetermined qualifications specified by the nongovernmental agency or association or the federal government.

(c) "Registration" which the state identifies those persons with qualifications and who are permitted to use a designation.

(d) "Licensure" means the process by which the state identifies persons who meet predetermined criteria to engage in an occupation that to engage in such occupation without a license is unlawful.

(e) "Health care personnel" means persons whose principal duties are performed for remuneration for the purpose of:

(1) Preventing physical illness;

(2) detecting, diagnosing or treating illness;

(3) facilitating recovery from illness;

(4) providing rehabilitation care following illness; and

(f) "Provider of health care" means an individual:

(1) Who is a direct provider of health care (including but not limited to practicing medicine and dentistry, registered professional nurse, licensed practical nurse, physician's assistant) in that person's current activity is the practice of health care to individuals or the activities of institutions (including long-term care facilities and health maintenance organizations) in which such care is provided.

(2) who holds a fiduciary interest in the institution in which such care is provided, other than an entity described in subsection (f)(3)(B) of this act which is also described in section 501(c)(3) of the Internal Revenue Code of 1954, as amended and which does not have as its primary purpose the delivery of health care services, the conduct of research, the conduct of professional or the practice of the professions described in subsection (f)(3) who receives, either personally or through a spouse, more than 1/5 of the net income of the institution.

(3) who receives, either personally or through a spouse, more than 1/5 of the net income of the institution.

(4) who receives, either personally or through a spouse, more than 1/5 of the net income of the institution.

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## CREDENTIALING

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(c) "Registration" means the process by which the state identifies and lists on an official roster those persons who meet predetermined qualifications and who will be the only persons permitted to use a designated title.

(d) "Licensure" means a method of regulation by which the state grants permission to persons who meet predetermined qualifications to engage in an occupation or profession, and that to engage in such occupation or profession without a license is unlawful.

(e) "Health care personnel" means those persons whose principal functions, customarily performed for remuneration, are to render services, directly or indirectly, to individuals for the purpose of:

(1) Preventing physical, mental or emotional illness;

(2) detecting, diagnosing and treating illness;

(3) facilitating recovery from illness; or

(4) providing rehabilitative or continuing care following illness; and who are qualified by training, education or experience to do so.

(f) "Provider of health care" means an individual:

(1) Who is a direct provider of health care (including but not limited to a person licensed to practice medicine and surgery, licensed dentist, registered professional nurse, licensed practical nurse, licensed podiatrist, or physician's assistant) in that the individual's primary current activity is the provision of health care to individuals or the administration of facilities or institutions (including medical care facilities, long-term care facilities, outpatient facilities, and health maintenance organizations) in which such care is provided and, when required by state law, the individual has received professional training in the provision of such care or in such administration and is licensed or certified for such provision or administration;

(2) who holds a fiduciary position with, or has a fiduciary interest in, any entity described in subsection (f)(3)(B) or subsection (f)(3)(D) other than an entity described in either such subsection which is also an entity described in section 501(c)(3) of the internal revenue code of 1954, as amended and supplemented, and which does not have as its primary purpose the delivery of health care, the conduct of research, the conduct of instruction for health professionals or the production of drugs or articles described in subsection (f)(3)(C);

(3) who receives, either directly or through a spouse, more than 1/5 of such person's gross

annual income from any one or combination of the following:

(A) Fees or other compensation for research into or instruction in the provision of health care;

(B) entities engaged in the provision of health care or in such research or instruction;

(C) producing or supplying drugs or other articles for individuals or entities for use in the provision of or in research into or instruction in the provision of health care; or

(D) entities engaged in producing drugs or such other articles;

(4) who is a member of the immediate family of an individual described in subsection (f)(1), (f)(2) or (f)(3); or

(5) who is engaged in issuing any policy or contract of individual or group health insurance or hospital or medical service benefits. An individual shall not be considered a provider of health care solely because the individual is a member of the governing board of an entity described in subsection (f)(3)(B) or subsection (f)(3)(D).

(g) "Consumer of health care" means an individual who is not a provider of health care.

(h) "Secretary" means the secretary of health and environment.

**History:** L. 1980, ch. 181, § 1; L. 1986, ch. 246, § 1; L. 1987, ch. 232, § 2; L. 1988, ch. 246, § 22; July 1.

### Research and Practice Aids:

Physicians and Surgeons § 5(1).

C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 12, 13, 18.

### Attorney General's Opinions:

Professional counselors; diagnosis and treatment of mental illness or disease. 89-80.

**65-5002. Same; credentialing applications; fees.** (a) Health care personnel seeking to be credentialed by the state shall submit a credentialing application to the secretary upon forms approved by the secretary. The application shall be accompanied by an application fee of \$1,000. The secretary shall not accept a credentialing application unless such application is accompanied by the application fee and is signed by 100 or more Kansas resident proponents of credentialing the health care occupation or profession seeking to be credentialed. All credentialing applications accepted by the secretary shall be referred to the technical committee for review and recommendation in accordance with the provisions of this act and rules and regulations adopted by the secretary. The application fee

established under this subsection (a) shall apply to every group of health care personnel which submits a credentialing application to the secretary on and after the effective date of this act and to every group of health care personnel which has not filed both a notice of intention and a fully answered application before the effective date of this act.

(b) The secretary shall remit all moneys received from fees under this section to the state treasurer at least monthly. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount thereof in the state treasury to the credit of the state general fund.

**History:** L. 1980, ch. 181, § 2; L. 1986, ch. 246, § 2; L. 1987, ch. 232, § 3; July 1.

**65-5003. Same; appointment of technical committee; hearings; evidence; criteria; findings; recommendations and report.** (a) A technical committee shall be appointed by the secretary to examine and investigate each credentialing application referred by the secretary. Seven persons shall be appointed to each technical committee and such persons shall be appointed for a term of one year. Within 120 days after the expiration of such term, the secretary shall appoint a successor to fill such vacancy. The chairperson of the technical committee shall be designated by the secretary. Three members of the technical committee shall be health care personnel currently credentialed under the laws of this state. Four members of the technical committee shall be consumers of health care who are not also providers of health care. No member of the technical committee shall have a direct economic or personal interest in the credentialing or noncredentialing of health care personnel whose application for credentialing will be reviewed by the technical committee. If a member of the technical committee has a direct economic or personal interest in the credentialing or noncredentialing of health care personnel whose application for credentialing will be reviewed by the technical committee or otherwise has a conflict of interest concerning the credentialing or noncredentialing of health care personnel whose application for credentialing will be reviewed by the technical committee, the secretary shall replace such member on the technical committee by appointing a new member to the technical committee. The new member shall serve for the remainder of the term of the original member. A vacancy on the technical committee shall be filled by appointment

within 120 days after such vacancy by the secretary for the remainder of the unexpired term of the vacant position.

(b) Each technical committee, as soon as possible after appointment of the members thereof, shall organize and review any credentialing application assigned to such committee by the secretary. The technical committee shall conduct fact-finding hearings and shall otherwise investigate the credentialing application.

(c) The technical committee shall attempt to obtain evidence and testimony from persons in support of the application and from persons opposed to the application, but evidence and testimony shall not be limited only to such persons. All interested persons shall have an opportunity to give evidence and testimony subject to such reasonable conditions as may be established by the technical committee in the conduct of the hearing and subject to applicable rules and regulations established under this act. A notice of all meetings of the technical committee shall be published in the Kansas register at least 30 days prior to the day of the meeting. The notice shall state the time and place of the meeting.

(d) The technical committee shall make findings in an objective, unbiased manner based on the criteria established in K.S.A. 65-5006 and amendments thereto. Credentialing applicants shall have the burden of bringing forth evidence upon which findings may be made and shall have the burden of proving by clear and convincing evidence that the health care provider occupation or profession should be credentialed by the state. The evidence required to sustain this burden of proof shall be more than hypothetical examples or testimonials. The technical committee shall detail its findings in a report and shall file the report with the secretary. The technical committee shall complete hearings and shall file a report for any applicant group of health care personnel that has begun the process.

(e) If the technical committee determines after consideration of the evidence and testimony that all the criteria established by law or by rules and regulations for credentialing have not been met and that credentialing is not appropriate, the technical committee shall recommend that an application for credentialing be denied. If the technical committee determines after consideration of the evidence and testimony that clear and convincing evidence has been presented that an occupational or professional group of health care personnel

has met all the criteria by rules and regulations that credentialing by the technical committee application for credentialing the technical committee application for credentialing there shall be included a report a recommendation of credentialing, a shall be based upon committee, stated in established by law for the recommendation credentialing have been tion shall be based in K.S.A. 65-5007 a

**History:** L. 198 ch. 246, § 3; L. 19

#### 65-5004.

**History:** L. 198 ch. 246, § 4; Repe 11; July 1.

**65-5005. Same; secretary; recommendations; report to legislature** receiving the report the technical committee credentialing application, a final report for the the final report, the criteria established in 5007 and amendments final report shall be of the house of representatives of the senate the committees on for consideration by tees. The secretary the technical committee prepared for submission secretary need not recommendations of a technical committee.

(b) If the secretary consideration of the report committee and the evidence presented to the technical committee criteria established by rules and regulations for credentialing and that credentialing secretary shall record action be taken on a If the secretary determines convincing evidence which hypothetical examples or

has met all the criteria established by law or by rules and regulations for credentialing and that credentialing by the state is appropriate, the technical committee shall recommend the application for credentialing be approved. If the technical committee recommends that the application for credentialing be approved, there shall be included in the committee's report a recommendation of the level or levels of credentialing, and such recommendation shall be based upon a finding by the technical committee, stated in the report, that all criteria established by law or by rules and regulations for the recommended level or levels of credentialing have been met. This recommendation shall be based on the criteria established in K.S.A. 65-5007 and amendments thereto.

**History:** L. 1980, ch. 181, § 3; L. 1986, ch. 246, § 3; L. 1987, ch. 232, § 4; July 1.

#### **65-5004.**

**History:** L. 1980, ch. 181, § 4; L. 1986, ch. 246, § 4; Repealed, L. 1987, ch. 232, § 11; July 1.

**65-5005.** Same; review of reports by secretary; recommendations of secretary; final report to legislature. (a) Within 120 days after receiving the report and recommendations of the technical committee relating to a credentialing application, the secretary shall prepare a final report for the legislature. In preparing the final report, the secretary shall apply the criteria established by K.S.A. 65-5006 and 65-5007 and amendments to these sections. The final report shall be submitted to the speaker of the house of representatives, to the president of the senate and to the chairpersons of the committees on public health and welfare for consideration by their respective committees. The secretary shall include the report of the technical committee in the final report prepared for submission to the legislature. The secretary need not be bound by the recommendations of a technical committee.

(b) If the secretary determines after consideration of the report of the technical committee and the evidence and testimony presented to the technical committee that all criteria established by law or by rules and regulations for credentialing have not been met and that credentialing is not appropriate, the secretary shall recommend that no legislative action be taken on a credentialing application. If the secretary determines that clear and convincing evidence which was more than hypothetical examples or testimonials was presented

to the technical committee that the applicant occupational or professional group of health care personnel should be credentialed by the state, that the applicant occupational or professional group of health care personnel has met all the criteria established by law or by rules and regulations for credentialing and that credentialing by the state is appropriate, the secretary shall recommend that the occupational or professional group of health care personnel be credentialed. If the secretary recommends that an occupational or professional group of health care personnel be credentialed, the secretary shall recommend: (1) The level or levels of credentialing, and such recommendation shall be based upon a finding by the secretary, stated in the report, that all criteria established by law or by rules and regulations concerning the recommended level or levels of credentialing have been met; (2) an agency to be responsible for the credentialing process and the level or levels of credentialing; and (3) such matters as the secretary deems appropriate for possible inclusion in legislation relating to the recommendation for credentialing.

(c) No group of health care personnel shall be credentialed except by an act of the legislature. The final report of the secretary and the report and recommendations of the technical committee shall constitute recommendations to the legislature and shall not be binding upon the legislature. The legislature may dispose of such recommendations and reports as it deems appropriate.

**History:** L. 1980, ch. 181, § 5; L. 1986, ch. 246, § 5; L. 1987, ch. 232, § 5; July 1.

#### **65-5006.** Same; credentialing criteria.

(a) The technical committee appointed pursuant to K.S.A. 65-5003 and amendments thereto and the secretary shall apply the following criteria to each credentialing application:

(1) The unregulated practice of the occupation or profession can harm or endanger the health, safety or welfare of the public and the potential for such harm is recognizable and not remote;

(2) the practice of the occupation or profession requires an identifiable body of knowledge or proficiency in procedures, or both, acquired through a formal period of advanced study or training, and the public needs and will benefit by assurances of initial and continuing occupational or professional ability;







be the custodian of all records, documents and other property of the technical committee.

(b) The secretary shall adopt rules and regulations necessary to implement the provisions of this act including, but not limited to, rules and regulations establishing the policies and procedures to be followed by the technical committee in the consideration of credentialing applications under this act.

(c) Members of the technical committee appointed pursuant to K.S.A. 65-5003 and amendments thereto shall be paid subsistence allowances, mileage and other expenses as provided in K.S.A. 75-3223 and amendments thereto when in attendance at a meeting of the technical committee authorized by the secretary.

**History:** L. 1980, ch. 181, § 9; L. 1986, ch. 246, § 8; L. 1987, ch. 232, § 9; July 1.

**65-5010.** Same; title of act. This act shall be known and may be cited as the Kansas act on credentialing.

**History:** L. 1980, ch. 181, § 10; July 1.

**65-5011.** Application of act to certain credentialing applications. Except as otherwise provided in this act, the review of an application for credentialing commenced prior to the effective date of this act shall be governed by the provisions of this act which apply to that part of the review of such application which was not completed prior to the effective date of this act. The secretary shall authorize an original application for credentialing filed prior to the effective date of this act, to be amended to address the standards and criteria established under this act. Nothing in this section shall be construed to require the filing of a new application with the secretary.

**History:** L. 1986, ch. 246, § 9; April 24.

#### Article 51.—HOME HEALTH AGENCIES

**65-5101.** Definitions. As used in this act, unless the context otherwise requires:

(a) "Council" means the home health services advisory council created by this act;

(b) "home health agency" means a public or private agency or organization or a subdivision or subunit of such agency or organization that provides for a fee one or more home health services at the residence of a patient but does not include local health departments which are not federally certified home health agencies, durable medical equipment companies which provide home health services by

use of specialized equipment, independent living agencies, the department of social and rehabilitation services and the department of health and environment;

(c) "home health services" means any of the following services provided at the residence of the patient on a full-time, part-time or intermittent basis: Nursing, physical therapy, speech therapy, nutritional or dietetic consulting, occupational therapy, respiratory therapy, home health aid, attendant care services or medical social service;

(d) "home health aide" means an employee of a home health agency who is not licensed or professionally registered to provide home health services but who assists, under supervision, in the provision of home health services and who provides related health care to patients but shall not include employees of a home health agency providing only attendant care services;

(e) "independent living agency" means a public or private agency or organization or a subunit of such agency or organization whose primary function is to provide at least four independent living services, including independent living skills training, advocacy, peer counseling and information and referral as defined by the rehabilitation act of 1973, title VII, part B, and such agency shall be recognized by the secretary of social and rehabilitation services as an independent living agency. Such agencies include independent living centers and programs which meet the following quality assurances:

(1) Accreditation by a nationally recognized accrediting body such as the commission on accreditation of rehabilitation facilities; or

(2) receipt of grants from the state or the federal government and currently meets standards for independent living under the rehabilitation act of 1973, title VII, part B, sections (a) through (k), or comparable standards established by the state; or

(3) compliance with requirements established by the federal government under rehabilitation services administration standards for centers for independent living;

(f) "part-time or intermittent basis" means the providing of home health services in an interrupted interval sequence on the average of not to exceed three hours in any twenty-four-hour period;

(g) "patient's residence" means the actual place of residence of the person receiving



Department of Health and Environment

Robert C. Harder, Secretary

Reply to: (913) 296-1281

March 12, 1993

Honorable Sandy Praeger  
Chair of the Senate  
Health and Welfare Committee  
State Capital  
Topeka KS 66612

RE: Senate Bill 397

Dear Senator Praeger:

This letter is in response to your request regarding Senate Bill 397 and its applicability to the Credentialing Review Program. The Credentialing Review Act (KSA 65-5001) requires "health care personnel" seeking to be credentialed (licensed or registered) by the state to submit a credentialing application to the Secretary of Health and Environment to be taken through a review process. A review through the Credentialing Review Program is not warranted or applicable in this case since Senate Bill 397 seeks to license hospice facilities, not a specific type of health care personnel.

If any additional information is needed regarding the credentialing program, I can be reached at the number listed above.

Sincerely,

A handwritten signature in cursive script that reads "Cathy Rooney".

Cathy Rooney, Director  
Health Occupations Credentialing

skh

cc: Robert Harder  
Dr. Baker  
Joseph Kroll  
Greg Reser

*Senate PH & L*  
*Attachment #2*  
*3-15-93*

## SENATE BILL No. 397

By Committee on Federal and State Affairs

2-26

8 AN ACT enacting the hospice licensure act; providing for licensing  
9 hospices; granting certain powers to and imposing certain duties  
10 upon the secretary of health and environment; providing for ad-  
11 ministrative procedures relating to licensure.

12  
13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. This act shall be known and may be cited as the  
15 hospice licensure act.

16 Sec. 2. As used in this act, unless the context otherwise requires:

17 (a) "Department" means the Kansas department of health and  
18 environment.

19 (b) "Hospice" means a legally constituted not-for-profit organi-  
20 zation, or agency, centrally administered, medically directed, nurse  
21 coordinated program providing comprehensive, continuous outpa-  
22 tient and home-like inpatient care for terminally ill patients and their  
23 families. It systematically joins together ~~employed~~ professionals and  
24 trained volunteers to form an interdisciplinary group, to assist in  
25 providing palliative and supportive care to meet the special needs  
26 arising out of the physical, emotional, spiritual, social and economic  
27 stresses which are experienced during the final stages of illness and  
28 during the dying and bereavement processes, regardless of ability  
29 to pay.

30 (c) "Hospice inpatient facility" means that the hospice provides  
31 inpatient care in compliance with section 418.100 of the code of  
32 federal regulations.

33 (d) "Hospice patient" means a patient diagnosed or referred, or  
34 both, to a hospice as terminally ill by an attending physician, who  
35 alone, or in conjunction with designated family members, has vol-  
36 untarily requested admission into a licensed hospice program or  
37 whose guardian has requested admission on behalf of such patient  
38 into a licensed hospice program and who has been accepted into a  
39 licensed hospice program.

40 (e) "Hospice patient's family" means the hospice patient's im-  
41 mediate family, including a spouse, brother, sister, child or parent.  
42 Other relations and individuals with significant personal ties to the  
43 hospice patient may be designated as members of the hospice pa-

Senate P. H. & C.  
Attachment #3

1   tient's family by mutual agreement among the hospice patient, the  
2   relation or individual and the hospice team.

3   (f) "Hospice team or interdisciplinary group" means the attending  
4   physician, and the following hospice personnel: Physician, licensed  
5   professional or licensed practical nurse, nurse, licensed social worker,  
6   pastoral or other counselor. Providers of special services, such as  
7   mental health, pharmacy, home health aides, trained volunteers and  
8   any other appropriate allied health services shall also be included  
9   on the interdisciplinary group as the needs of the patient dictate.

10   (g) "Identifiable hospice administration" means an administrative  
11   group, individual or legal entity that has an identifiable organizational  
12   structure, accountable to a governing board directly or through a  
13   chief executive officer. This administration shall be responsible for  
14   the management of all aspects of the program.

15   (h) "Medically directed" means that the delivery of medical care  
16   is directed by a physician who is employed by the hospice for the  
17   purposes of providing ongoing palliative care as a participating mem-  
18   ber of the hospice team.'

19   (i) "Nurse coordinated" means the hospice must designate a reg-  
20   istered nurse to coordinate the implementation of the plan of care  
21   for each patient.

licensed professional

22   (j) "Palliative care" means treatment directed at controlling pain,  
23   relieving other physical and emotional symptoms and focusing on  
24   the special needs of the hospice patient and the hospice patient's  
25   family, as they experience the dying process rather than treatment  
26   aimed at investigation and intervention for the purpose of cure or  
27   prolongation of life.

28   (k) "Physician" means a person licensed to practice medicine and  
29   surgery.

30   (l) "Secretary" means the secretary of health and environment.

31   Sec. 3. (a) The hospice shall provide access to planned, coord-  
32   inated medical and nursing services to hospice patients on a 24-  
33   hour basis, seven days per week.

34   (b) The hospice shall establish formal admission criteria that re-  
35   flect the patient's and family's desire and need for hospice care.

36   (c) The admission criteria shall reflect, to the extent possible,  
37   that the hospice will admit patients regardless of diagnosis or ability  
38   to pay for services.

39   (d) The hospice shall organize its services to respond to patient  
40   and family needs whenever and wherever they arise. The hospice  
41   shall provide both structure and staff to ensure continuation of the  
42   hospice care plan in home, outpatient and home-like inpatient  
43   settings.

(e) The hospice shall provide coordinated access to inpatient care, made available either directly by a hospice inpatient facility or through arrangement with a licensed inpatient facility, assuring the continued involvement of the interdisciplinary group on a 24-hour-a-day basis.

(f) The hospice program shall provide evidence that it has established written policies for an interdisciplinary plan of care, including but not limited to:

(1) Assessments, identified problems, proposed interventions, level and frequency of services and goals;

(2) policies and procedures for maintaining appropriate reports, patient bill of rights, informed consent, quality assurance and utilization review programs;

(3) policies and procedures for conducting ongoing assessments reflecting the interdisciplinary natures of hospice services, including assessments of volunteer participation and bereavement counseling; and

(4) policies and procedures for maintaining accurate, current, integrated clinical records for all patient and family units and assurances for the confidentiality of these records.

(g) The hospice program shall provide opportunities for appropriate continuing education of its interdisciplinary group members, as well as assuring the competent training and supervision of its volunteers and bereavement counselors.

(h) The hospice shall provide bereavement services under the supervision of a qualified professional. The plan of care for these services shall reflect family needs as well as a clear delineation of services to be provided for not more than one year following the death of the patient.

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(i) The hospice shall offer trained volunteer support to each patient and patient's family admitted to its program of care. Volunteers shall be used in defined roles, under the supervision of designated hospice staff.

a licensed hospice or as a hospice, or words of like effect,

Sec. 4. (a) No agency, organization or individual shall hold itself out as providing hospice or hospice-like care unless licensed in accordance with the provisions of this act.

(b) The provisions of this act shall not apply to any person or organization conducting a program by and for the adherents of any recognized church or religious denomination or sect for the purpose of providing for the care of the dying who depend upon prayer or spiritual means for support and consolation in the practice of the religion of such church, religious denomination or sect.

(c) A license issued under this act is not assignable or transferable

1 and must be separate from any existing license and is subject to  
 2 suspension or revocation at any time for failure to comply with the  
 3 provisions of this act or with appropriate rules and regulations  
 4 adopted by the secretary.

5 Sec. 5. (a) A hospice certified under the hospice medicare ben-  
 6 efit, regardless of whether the hospice obtains or seeks medicare  
 7 reimbursement, shall be licensed by the secretary after receipt of  
 8 proof confirming the hospice is certified according to the standards  
 9 and conditions of the hospice medicare benefit.

10 (b) Any organization or agency, operational as of January 1, 1993,  
 11 which provides one or more hospice services as defined in this act,  
 12 but is not in complete compliance with the provisions of this act,  
 13 may petition the secretary for a provisional license, in order to fulfill  
 14 the requirements for hospice licensure established by this act. The  
 15 deadline for demonstrating complete compliance shall be January 1,  
 16 1996. If any such organization, or agency fails to comply with the  
 17 provisions of this act by the stated date, such organization or agency  
 18 shall no longer be called a hospice.

19 (c) Any organization or agency which does not qualify under  
 20 subsections (a) or (b) and which wishes to establish and hold itself  
 21 out as providing hospice or hospice-like care shall be licensed ac-  
 22 cording to the provisions of this act.

23 (d) Any organization or agency which wishes to be licensed as a  
 24 hospice shall file a written application with the secretary on a form  
 25 prescribed by the secretary. The application shall be accompanied  
 26 by a license fee fixed by rules and regulations of the secretary under  
 27 section 6 and amendments thereto.

28 Sec. 6. (a) The secretary may adopt rules and regulations nec-  
 29 essary to carry out the provisions of this act. The rules and regulations  
 30 shall be initially adopted within one year after the effective date of  
 31 this act.

32 (b) The rules and regulations adopted by the secretary under the  
 33 provisions of this act shall apply to all organizations and agencies  
 34 providing hospice care.

35 (c) The secretary may fix, charge and collect license fees and  
 36 license renewal fees as may be necessary to cover the expenses  
 37 incurred in administering the provisions of this act.

38 Sec. 7. (a) There is hereby created within the department the  
 39 hospice advisory council which shall advise and make recommen-  
 40 dations to the secretary relating to the rules and regulations adopted  
 41 and the implementation and administration of this act. All budgeting,  
 42 purchasing and related management functions of the council shall  
 43 be administered under the direction and supervision of the secretary.

A license issued under this act shall expire one year after its date of issuance and may be renewed upon application of the hospice as provided by rules and regulations of the secretary. An application for renewal of a license shall be accompanied by the license renewal fee fixed by rules and regulations of the secretary under section 6 and amendments thereto.

(a) Any organization or agency may file a written application with the secretary for licensure as a hospice. The application shall be filed on a form prescribed by the secretary and shall be accompanied by a license fee fixed by rules and regulations of the secretary under section 6 and amendments thereto.

(b) Any organization or agency which as of January 1, 1993, provided one or more hospice services which is not in complete compliance with the provisions of this act, may apply to the secretary for a provisional license. The application for a provisional license shall be accompanied by a provisional license fee fixed by rules and regulations of the secretary under section 6 and amendments thereto. A provisional license shall expire on January 1, 1996. If an organization or agency has failed to comply with the provisions of this act by the expiration of the provisional license, such organization or agency shall not be licensed under this act until such time as the organization or agency qualifies for licensure under this act.

, provisional license fees

1 All vouchers for expenditures and all payrolls of the council shall be  
2 approved by the chairperson of the council and the secretary.

3 (b) The hospice advisory council shall be composed of five mem-  
4 bers. All members of the hospice advisory council shall be residents  
5 of Kansas and shall be appointed by the secretary for a term which  
6 shall expire on the expiration date of this section under subsection  
7 (e). The five members of the council shall be representatives of  
8 hospice programs. A vacancy on the hospice advisory council shall  
9 be filled by appointment of the secretary until expiration of this  
10 section under subsection (e).

11 (c) The hospice advisory council shall meet not less than quar-  
12 terly, or as necessary, at a place, day and hour determined by the  
13 council. The council may also meet at such other times and places  
14 as may be designated by the chairperson or upon the request of the  
15 majority of the members of the council.

16 (d) Members of the hospice advisory council attending meetings  
17 of the council, or attending subcommittee meetings thereof author-  
18 ized by the council, shall be paid amounts provided in subsection  
19 (e) of K.S.A. 75-3223 and amendments thereto.

20 (e) The provisions of this section shall expire on July 1, 1994.

21 Sec. 8. (a) Any person may make a complaint against a hospice  
22 licensed under the provisions of the act by filing a complaint in  
23 writing with the secretary stating the details and facts supporting  
24 the complaint.

25 (b) If the secretary determines after an investigation that the  
26 charges are sufficient to warrant a hearing to determine whether the  
27 license of the hospice should be suspended or revoked, the secretary  
28 shall fix a time and place for a hearing and require the hospice to  
29 appear and defend against the complaint in accordance with the  
30 provisions of the Kansas administrative procedures act.

31 (c) A copy of the complaint shall be given to the hospice at the  
32 time it is notified of the hearing. The notice of the hearing shall be  
33 given at least 20 days prior to the date of the hearing.

34 Sec. 9. (a) The secretary shall refuse to issue, shall suspend or  
35 shall revoke the license of any hospice (1) for failure to substantially  
36 comply with any provision of this act or with any rule and regulation  
37 of the secretary adopted under the provisions of this act or (2) for  
38 obtaining the license by means of fraud, misrepresentation or con-  
39 cealment of material facts.

40 (b) Any hospice agency which has been refused a license or which  
41 has had its license suspended or revoked by the secretary may  
42 request a hearing which shall be conducted in accordance with the  
43 provisions of the Kansas administrative procedures act.

shall refuse to renew,

A hospice which has been licensed by the secretary and which is certified under the hospice medicare benefit, regardless of whether the hospice obtains or seeks medicare reimbursement, may be granted a license renewal based upon such certification.

, which has been refused the renewal of a license



1     Sec. 10. The secretary may maintain, in the manner provided  
2 by the act for judicial review and civil enforcement of agency actions,  
3 an action in the name of the state of Kansas for injunction or other  
4 process against any person to restrain or prevent any violation of  
5 the provisions of the hospice licensure act or any rule and regulation  
6 adopted pursuant thereto.

7     Sec. 11. This act shall take effect and be in force from and after  
8 its publication in the statute book.