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 19, 1993 in Room 526-S of the Capitol.

All members were present except:

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

Conferees appearing before the committee:

John Grace, Kansas Association of Homes for the Aging
Robert C. Harder, Secretary, Kansas Department of Health and Environment
Sandra Strand, Kansans for Improvement of Nursing Homes, Inc.

Others attending: See attached list

Continued hearing on **SB 405** - Restrictions on medical nursing facilities.

John Grace, KINH, appeared in opposition to **SB 405** and stated modifications would need to be made in the bill in order to address projects that are currently underway in order to allow nursing facilities to be remodeled. (Attachment 1) In answer to a member's question, Mr. Grace stated there is a state policy that requires all beds in a nursing home program for medicaid recipients be certified. In regard to continuing care contract homes, there are approximately 20 homes registered with the insurance department in the state that primarily serve people on their campus, and approximately 20% of them are on medicaid.

Robert C. Harder, KDHE, appeared as a proponent on **SB 405** with recommended amendments as shown on the balloon of the bill. Dr. Harder stated if legislation is going to be passed, it should be the tough line with a genuine moratorium -- no exemptions or minimum exemptions. (Attachment 2) In answer to a member's question, 44% of the 29,000 nursing beds in Kansas are medicaid certified, and this figure varies year to year. He also noted there will be a significant number of private pay patients who convert to medicaid, but that movement will be within the 29,000 figure; and in terms of more attention given to community services, the House has made a recommendation that the goal should be 30-70 -- at present it is 90-10 -- and cannot be accomplished without having dramatic policy changes as far as the state is concerned. Dr. Harder stated he would not support excluding the intermediate personal care plan (assisted living).

Sandra Strand, KINH, appeared as an opponent to **SB 405** for the following reasons: (1) the bill does not provide adequate protection for areas of the state in which both nursing home beds and community services are in short supply, (2) nothing in the bill as written protects medicaid recipients or applicants from being turned away by nursing homes in preference for residents who can pay the higher private rates, (3) whether or not the bill would allow outdated facilities to replace existing beds with new construction, and (4) a five-year moratorium is too restrictive for sound health care planning and that the regional supply of nursing home beds, the need for nursing home care, and the status of community resources should be reevaluated on an annual basis. (Attachment 3) During Committee discussion regarding division of assets, it was noted that rather than affecting eligibility, it decreased the amount the individual pays of the total cost of care and increased the portion of medicaid.

Written testimony was received from Stan Teasley, Executive Director, Kansas Commission on Veterans Affairs, who requested an amendment that would exempt the Kansas Soldiers' Home from the provisions of **SB 405**, (Attachment 4), John L. Kiefhaber, Kansas Health Care Association, with proposed amendments, (Attachment 5), and Joanne Hurst, Secretary, Kansas Department on Aging, in support of the bill with suggested amendments, (Attachment 6).

Action on **SB 405** - Restrictions on medical nursing facilities.

Senator Papay made a motion to amend the bill on page 1, line 15, delete "or a continuing care contract home" and insert, "or intermediate personal care homes of 10 beds or less", seconded by Senator Jones. Committee discussion related to the need to keep "continuing care contract home" in the bill as being a contractual agreement, and it was noted that counties with long-term care beds licensed as a part of their hospital would not be affected by this moratorium. Senator Langworthy questioned if the moratorium issue was ever addressed by the Health Care Decisions for the 90's, and staff related that certificate-of-need was addressed in that joint committee. Senator Langworthy made a substitute motion to recommend **SB 405** be considered for further study by Health Care Decisions for the 90's, seconded by Senator Salisbury. Committee discussion related to concerns that immediate action needs to be taken to contain health care costs and the bill should be worked now. Senator Salisbury made a motion that action on the substitute motion be tabled until the next meeting, seconded by Senator Ramirez. The motion carried.

Action on **SB 397** - Hospice licensure act.

The Chair asked for the Committee's pleasure on **SB 397.** Senator Lee made a motion to recommend **SB 397** favorably for passage, seconded by Senator Jones. Concerns were expressed about the possibility of the licensing restrictions in the bill causing a negative affect on the care of hospice patients throughout the state. Senator Salisbury made a substitute motion to adopt a substitute bill for **SB 397** that would essentially require hospice go through the credentialing procedure, seconded by Senator Hardenburger. The motion failed. (Attachment 7) Back on the original motion to pass the bill out favorably. The motion carried.

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

The next meeting is scheduled for March 22, 1993.

GUEST LIST

COMMITTEE: SENATE PUBLIC HEALTH AND WELFARE DATE: 3-19-93

NAME	ADDRESS	COMPANY/ORGANIZATION
KAREN WEICHERT	TOPEKA	MIDLAND HOSPICE
Susan Bullock	Topeka	Brewster Place
Ron Schmoller	TOPEKA	BREWSTER PLACE
Vicky Martin	Topeka	KDOA
Wendell Strom	Topeka	AARP-CCTF
Nancy L. Whitem	Topeka	SRS
John Kiefhaber	Topeka	Ks Health Care Assn.
John Peterson	Topeka	Ks Hsin of Homes for Aging
Kay LeMoine	Topeka	JAAA
Danielle Doe	Topeka	Wichita Hosp Assoc
KEITH R HANDLS	TOPEKA	CHRISTIAN SCIENCE COMM ON PUBLICATION FOR KS
John S. Homulsh	Topeka	Assoc. KS. Hospices.
Joseph T. Keoee	Topeka	KAHF
Sandra Strand	Lawrence	KINH
[illegible]	Topeka	KPHS

Kansas Association
of Homes for the Aging

Enhancing the quality of life of those we serve since 1953.

To: Senate Public Health and Welfare Committee

From: John R. Grace, President/CEO

Date: March 17, 1993

Re: SB 405

Thank you for the opportunity to present testimony regarding the proposed moratorium on nursing facility beds.

The Kansas Association of Homes for the Aging (KAHA) is a trade association representing over 130 not-for-profit retirement and nursing homes throughout Kansas.

The Association has in the past opposed a moratorium, particularly the federal certificate of need program that was repealed in the mid-1980s. We supported an open market approach that would provide consumer choice and encourage providers to develop new or higher quality services.

The Association would consider modifications to the current open market, if they were a part of a short-term limitation on growth, lasting either one or two years.

The modifications need to provide exclusions for:

1. Projects that are currently underway. This is particularly important to members who rely on fundraising for financing. They may not meet the construction or permanent financing exceptions.

2. Renovations or replacements. Nursing facilities that want to remodel or are forced to replace beds due to natural disasters should be allowed to do so. During renovation or replacement, facilities may wish to add a limited number of beds, for example, for a special care wing, and should be allowed this limited expansion.

3. Personal care beds, new services and other health and housing services along the continuum of care.

(over)

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Fax: 913-233-9471

Senate P H & W
Attachment 1
3-19-93

4. Continuing care retirement homes are unique and should be excluded because of their contractual obligations to provide nursing facility care to their apartment residents.

5. Exceptions for facilities with high occupancies.

KAHA is also concerned with the growing elderly population and the effect that a moratorium would have on the choices and quality available. When construction is controlled, existing providers are rewarded with relatively high occupancy and protection from new competition and reducing the incentives for new and higher quality services.

Some proponents of the moratorium believe that it can control the growing costs of nursing facility care. However, as the April 1990 Performance Audit Report by the Legislative Division of Post Audit revealed, it is operating costs and not increasing inpatient days, that are increasing costs. The increasing operating costs are due to rising nursing salaries, increased workers compensation rates, etc.

An additional factor related to cost containment are those individuals who may be in a nursing facility and able to live at home with home and community based services. The state is not required to pay for the care of any individual who might be inappropriately placed in a nursing facility. Currently, the preadmission assessment and referral program evaluates all nursing facility residents for appropriateness of placement and denies medicaid payment if their needs do not require that level of service.

Thank you for the opportunity to address the Committee.

test.doc

State of Kansas
Joan Finney, *Governor*

Department of Health and Environment

[redacted]
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 405

Background

Thank you for the opportunity to appear as a proponent of the moratorium concept set forth in SB 405. As part of my testimony, I will be making several recommendations to amend SB 405, but want to clearly state that as Secretary of the Kansas Department of Health and Environment, I support the intent of this bill. My proposed amendments seek only to strengthen the concept of the bill, to eliminate redundant language and make the bill administratively efficient.

I also recognize some will oppose this approach on the premise marginal facilities will be protected from competition. I recognize my responsibility as secretary of Health and Environment to protect and assure quality. I answer these concerns succinctly; long term quality is dependent upon investment in cost effective approaches to long term care. Continuation of current policy will bankrupt the state and lead to compromised care for all Kansas citizens.

Senate Bill 405 was introduced at the request of the Department of Social and Rehabilitation Services (SRS) for the purpose of placing a moratorium on the development of new nursing home beds. The desired outcome is to help SRS control costs for institutional long term care. There is no question these costs have increased significantly in the last several years.

I recognize that there is some disagreement as to whether or not Kansas has the highest number of nursing home beds per 1,000 for persons aged 65 or older, but there is little disagreement that Kansas clearly exceeds the national average for such beds. This has resulted in the paradox of a long term care system not operating anywhere near capacity yet the continued infusion of new long term care beds. Even counties that experience the lowest occupancy rates in the state are building long term care beds.

Senate P H & W
Attachment #2
3-19-93

We are aware of new facilities being built in nine counties. In only two of these is occupancy over 95%. In five, the occupancy is below 90%, and three of these are below 85%. If this trend is not stopped by assertive legislative action, scarce dollars will continue to be funneled into the most expensive component of our long term care system.

Please consider Exhibit 1 attached to this testimony. This exhibit displays from 1985 through the third quarter of 1992 the number of adult care homes, number of beds and occupancy rate. In calendar year 1985, the last year the Certificate of Need Program was in effect, Kansas had 373 adult homes, with 26,808 beds. Annual average occupancy was 90.17%. The most recent 1992 figures show 420 adult care homes, with 29,850 beds and statewide occupancy of 89.3%. Capacity has increased by 11.3%, yet occupancy is within 1% of 1985 levels. To paraphrase the movie, this exhibit proves the maxim, "build it, and they will come."

Let me characterize Exhibit 1 in real dollar terms. Based on available beds and occupancy rates, there are approximately 2,300 more residents using adult care home beds in 1992 than in 1985. Approximately 44% of these 2300 (1012) are supported by the Title XIX Medicaid program at an average cost of $51.37 each day. Forty-four percent, or 1,012 times $51.37 equals $51,986 a day, or $19 million a year. State policy cannot continue down a path that results in this kind of increase for daily cost.

Utilizing data provided quarterly by licensed adult care homes, my agency has determined that only 18 of our state's 105 counties have an average occupancy rate of over 95%. Twenty-six have an occupancy rate of 90% to 94.9%, but 61 of our 105 counties have an occupancy below 89%, and 12 of these have an occupancy rate of less of than 85%. There is clearly excess capacity in the adult care home industry.

This proposed moratorium on long term care beds will become an important component of a major shift in state policy regarding the provision of long term care services. The 1992 Legislature passed Senate Bill 182 which provides for the Department of SRS to conduct preadmission screenings of potential nursing home residents. As part of this process, the Department of SRS will be identifying the needs of persons seeking nursing home placement, which will help continue the process of expanding community based services. Current policy is out of balance, placing too much reliance on institutional care, and not enough attention on home and community based care. Close to 93% of our state's expenditure for long term care is to institutions. Not only will reversing this trend result in dollar savings to the state, it will also allow many persons to remain in their own homes or with family instead of being placed in an institution.

In addition to supporting the moratorium on what are commonly referred to as nursing home beds, I am also proposing that a moratorium include personal care beds, commonly known as assisted living.

In order for a moratorium to be effective, it must be complete. The message must be clear and the policy must be iron-clad in prohibiting the expansion of beds that can be used for long term care services.

As noted in our 1993 Long Term Care Report to this Legislature, KDHE differs from the Department of SRS and the Department on Aging on this issue. We do not see personal care beds as an effective cost reducing alternative to nursing home beds. Residents in these facilities tend to develop more intensive medical nursing needs as time goes on and these facilities have a tendency to become nursing homes incognito; or, the residents transfer to a full-fledged nursing facility. Promoting the development of personal care beds while prohibiting the

development of new nursing home beds could conceivably create a bottle neck in the long term care system. It will be more effective state policy to funnel money otherwise targeted for personal care beds to adult family home or similar community based programs.

Concern regarding the escalating cost of long term care is very real. In a six year period from FY 85 to FY 91, Medicaid expenditures for institutional long term care rose well over 80%, yet the number of Medicaid recipients increased only 17%. This clearly is an ineffective, inefficient use of scarce dollars and the state must redirect its long term care focus to non-institutional approaches.

I would like to draw your attention now to the proposed bill amendments attached to this testimony and summarize them as follows.

Section 1 (a): We are recommending deleting the word "nursing" from the basic definition and including the definitions of nursing facility and personal care home as found in K.S.A. 39-923. Reference to continuing care contract homes should also be deleted as it is redundant. It seems the intent of the bill is to include them in the moratorium which is already accomplished by our proposed amendments to this subsection.

Section 1 (c): We are proposing this be deleted in its entirety. This subsection becomes unnecessary with our proposed amendment to subsection (a).

Section 1 (d): We propose deleting this subsection in its entirety. If the intent of the bill is to include such facilities in the moratorium, this is unnecessary as these facilities will be covered under the definition of subsection (a). We are opposed if the intent of the bill is to exclude such facilities from the moratorium as this creates a significant loophole in what the moratorium is trying to accomplish. The statute referred to in subsection (d) is the law which requires facilities such as Aldersgate Village here in Topeka, to provide certain information and assurance to the insurance commissioner to become certified as a continuing care provider. Excluding such facilities from the moratorium would be contrary to the policy envisioned in the bill.

Section 1 (e): We propose to amend the definition of commenced construction as indicated in the balloon amendment. This language was used in the Kansas Certificate of Need Program and provides a much tighter definition of commencing construction.

Section 1 (f): We are proposing to delete the definition of permanent financing in its entirety. We believe that any grandfathering provision provided in the bill should be keyed to the actual commencement of construction and not evidence of permanent financing. Between the hopeful passage of this bill and its effective date, it will not be difficult for the more established providers to secure permanent financing as defined in SB 405. It is much too loose a grandfathering provision and we propose it be stricken.

Section 2 (a): We are proposing changes to this subsection to make it consistent with the definitions in Section 1. References to continuing care providers is redundant given the proposed definition in Section 1 (a), as is the reference to intermediate care facilities for the mentally retarded. The conversion of facilities for the mentally retarded to medical facilities is already prohibited in Section 2 (a) (2) of this bill. Facilities which have commenced construction prior to and not just on the effective date of the act, should also be grandfathered.

We are also proposing that any existing adult care home operating for the care of religious orders be exempt, as circumstances may dictate their need for licensure.

Section 2 (b) (2): We are proposing to delete this subsection in its entirety as this prohibition is already found in Section 2 (a) (2).

Section 3: We are recommending that any directive to the secretary of Health and Environment to develop regulations providing for waivers from the moratorium be stricken from this bill. As indicated earlier in my testimony, a moratorium will be most effective if it is iron-clad and has no loopholes. A facility which is destroyed by natural disaster, fire or other casualty, is not prohibited from rebuilding under the language of this bill and these are the only circumstances in which new construction should be allowed.

If, however, the Legislature wishes to include waiver provisions, it is suggested that those waiver provisions be included in the legislation itself. These waivers essentially become political decisions that should be resolved in the political process.

In addition, authorizing KDHE to adopt regulations regarding waivers results in an unnecesary fiscal impact. Developing and enforcing procedures and standards for waivers that assure due process will consume both administrative and legal resources.

Finally, while appreciating the need for planning and stability, we do not support a moratorium that extends for five years. In health care, five years is an eternity. We know from experience with the expiration of the Certificate of Need Program that new providers come on line approximately two years after the expiration of such limitations. A five year sunset provision effectively translates into a six or seven year moratorium, which is simply too long to evaluate its effect. We propose instead a moratorium to expire on July 1, 1995, at which time the merits of the moratorium can be evaluated.

I believe that consideration of this moratorium is one of the most significant policy decisions this Legislature will make this year. The fundamental question is whether or not we are willing to take the aggressive action necessary to shift our focus from expensive institutional care to a community based program that will save dollars or at least serve more people per dollar. Such a shift in policy results in more individuals being able to stay in their own home, or their own community, or with their own family for an extended period of time, which surely have benefits we have yet to realize. For these reasons, and all those reasons spelled out in my testimony, I urge the Committee to pass SB 405 with the amendments I propose.

Presented by: Robert C. Harder, Secretary
Kansas Department of Health and Environment
March 17, 1993

Exhibit 1

Occupancy Rates for Adult Care Homes

Year	Quarter	# of Facilities	# of Beds	Occupancy Rate
1985	1			90.1
1985	2	373	26,808	90.02
1985	3			90.33
1985	4			90.59
Average				90.17
1986	1			90.60
1986	2	373	26,837	90.48
1986	3			89.92
1986	4			89.08
Average				90.22
1987	1			89.41
1987	2	377	27,471	90.06
1987	3			89.91
1987	4			89.2
Average				89.64
1988	1			87.80
1988	2	385	28,485	87.11
1988	3			87.64
1988	4			87.32
Average				87.46
1989	1			87.34
1989	2	399	28,947	88.14
1989	3			88.45
1989	4			88.25
Average				88.04
1990	1			86.68
1990	2	415	29,603	86.09
1990	3			87.3
1990	4			88.09
Average				87.04
1991	1			87.7
1991	2	419	29,817	87.58
1991	3			88.67
1991	4			89.95
Average				88.45
1992	1			88.75
1992	2	420	29,850	88.7
1992	3			89.3

1985 to 1992 = 11.3% bed increase
Occupancy down .8%

Source: Adult Care Home Quarterly Reports KDHE

Session of 1993

SENATE BILL No. 405

By Committee on Ways and Means

3-3

AN ACT concerning medical nursing facilities; limitations on new and converted uses.

Be it enacted by the Legislature of the State of Kansas:

Section 1. As used in this act:

(a) "Medical ~~nursing~~ facility" means a ~~nursing~~ facility, except it does not include any ~~nursing~~ facility that is operated as an intermediate care facility for the mentally retarded~~, or a continuing care contract home~~. as defined in K.S.A. 39-923 (a) (2) and (3),

(b) "Bed" means an equipped location at which a patient, client or other individual may receive 24-hour-a-day board and skilled nursing care and treatment.

~~(c) "Nursing facility" means a nursing facility as defined in subsection (a)(2) of K.S.A. 39-923 and amendments thereto.~~

~~(d) "Continuing care contract home" means a home as defined in subsection (c) of K.S.A. 1992 Supp. 40-2231 and amendments thereto where a provider, as defined in subsection (d) of K.S.A. 1992 Supp. 40-2231 and amendments thereto provides continuing care under a continuing care contract, as defined in subsection (a) of K.S.A. 1992 Supp. 40-2231 and amendments thereto.~~

(c) ~~(e)~~ "Commenced construction" means ~~all necessary local, state and federal approvals required to begin construction have been obtained, including all zoning approvals and contracts for construction have been signed.~~ the sponsor has:

(1) Provided the state agency with a copy of the construction contract which specifies the date by which actual construction is scheduled to begin and the date by which it is scheduled to be completed;

(2) provided evidence to the state agency demonstrating that the sponsor has the funds available to complete the project; and

(3) provided documentation to the state agency that physical construction has begun.

~~(f) "Permanent financing" means the owner of the project has a commitment letter from a lender indicating an affirmative interest in financing the project subject to reasonable and customary conditions, including a final commitment from the lender's loan committee or other entity responsible for approving loans or the owner demonstrates sufficient assets, income or financial reserves to complete the project with less than 50% in outside financing.~~

Sec. 2. On and after the effective date of this act:

(a) No license as a ~~nursing home under subsection (a)(2) of K.S.A. 39-923 and amendments thereto and no certificate of registration as a continuing care provider under K.S.A. 1992 Supp. 40-2235 and amendments thereto shall be issued for a~~ medical ~~nursing~~ facility shall be issued for a

which, after the effective date of this act, (1) is constructed, (2) is created by conversion from another licensure category, (3) enlarges the licensed capacity of an existing medical ~~nursing~~ facility, or (4) changes a place which is not a medical ~~nursing~~ facility, ~~including any existing nursing facility that is operated as an intermediate care facility for the mentally retarded~~, into a medical ~~nursing~~ facility, except nothing in this subsection (a) shall apply to facilities which have commenced construction on the effective date of this act ~~or have permanent financing on a project on the effective date of this act~~. or to an adult care home operated under provisions of K.S.A. 39-941. or prior to

(b) (1) No medical ~~nursing~~ facility beds that are for all individuals shall be converted to medical ~~nursing~~ facility beds exclusively for individuals receiving mental health care and treatment.

~~(2) No medical nursing facility beds that are exclusively for individuals receiving mental health care and treatment shall be converted to medical nursing facility beds that are for all individuals.~~

~~Sec. 3. The secretary of health and environment may adopt rules and regulations with the concurrence of the secretary of social and rehabilitation services and the secretary on aging which establish procedures and standards under which the secretary of health and environment may grant a waiver of the limitations on the granting of licenses on an individual, regional or state wide basis.~~

Sec. ~~4.~~ 3 The provisions of this act shall sunset on July 1, ~~1998~~. 1995

Sec. 5. This act shall take effect and be in force from and after its publication in the statute book.

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 HEALTH AND WELFARE
CONCERNING SB 405

March 17, 1993

Madam Chair and Members of the Committee:

Kansans for Improvement of Nursing Homes has not historically supported legislative attempts to limit nursing home construction because we believed that such limitations might contribute to poor quality care in a climate of scarce beds. However, we have modified our position over time because we share the concern that while the Kansas rate of institutionalization of the elderly is among the highest in the country, our state's investment in community long term care services is among the lowest.

Kansas ranks 13th nationally in our percentage of population 65 and older, and the graying of the state population is expected to continue as younger people leave and older people stay. By the year 2010 the Census Bureau projects that Kansas will be among the 10 most aged states in the nation. Within our growing older population, the 85 and older segment is growing at the fastest rate. As a group, the over-85 population has the greatest need for assistance with the activities of daily living, while also having the most limited family resources to provide that assistance. Currently, nearly one-third of our over-85 population live in nursing facilities.

We agree that nursing home costs are out of control -- not only for the state, but also for the older consumers. While nursing home care accounts for 35.5% of the Kansas Medicaid budget, elderly households are also spending 36% of their out-of-pocket health care costs on nursing home care, and nearly half of all nursing home costs are paid by consumers. Simply stated, none of us can afford our continued reliance on nursing home care over home-based care.

KINH recognizes the moratorium on construction of new nursing homes as an important component in the state's attempt to control nursing home costs. We are also firm in our conviction that the state must develop a comprehensive long term care policy which will address the needs of the elderly and people with disabilities and will also evaluate the resources that are or are not available to meet those needs. We also believe our state long term care policy must include pre-admission assessment and referral of all nursing home applicants, and must provide for the development and funding of quality community services that are adequate to meet local needs.

While we support the general concept of a limitation on new nursing home construction, we have some concerns and questions about the current bill.

Senate PHFW
Attachment #3
3-19-93

First, the bill does not provide adequate protection for areas of the state in which both nursing home beds and community services are in short supply. According to the most recent adult care home quarterly statistical report from the Kansas Department of Health and Environment, 23 counties currently have average occupancy rates at or above 95%, which is considered to be an optimal rate. There are 11 counties with occupancy rates less than or equal to 85%, which can result in a reduced Medicaid reimbursement rate. The remaining counties have occupancy rates between 85% and 95%. The map on the attached page indicates the location of these counties. As you can see, the counties with the highest occupancy rates are concentrated in the most rural areas of the state.

Second, nothing in the bill as written protects Medicaid recipients or applicants from being turned away by nursing homes in preference for residents who can pay the higher private rates. We request that language be added to the bill to protect Medicaid residents from discrimination. Other states have addressed the problem of Medicaid discrimination by either requiring admission to nursing homes on a first-come, first-served basis (Massachusetts, Connecticut, Ohio); or by establishing an equal rates law, in which private pay residents cannot be charged more than the Medicaid rate (Minnesota, North Dakota).

Third, we cannot clearly determine if this bill would allow outdated facilities to replace existing beds with new construction. What protections are provided to allow communities to plan and provide for the needs of their aging citizens?

Fourth, we believe that a five-year moratorium is too restrictive for sound health care planning. We propose that the regional supply of nursing home beds, the need for nursing home care, and the status of community resources should be reevaluated on an annual basis.

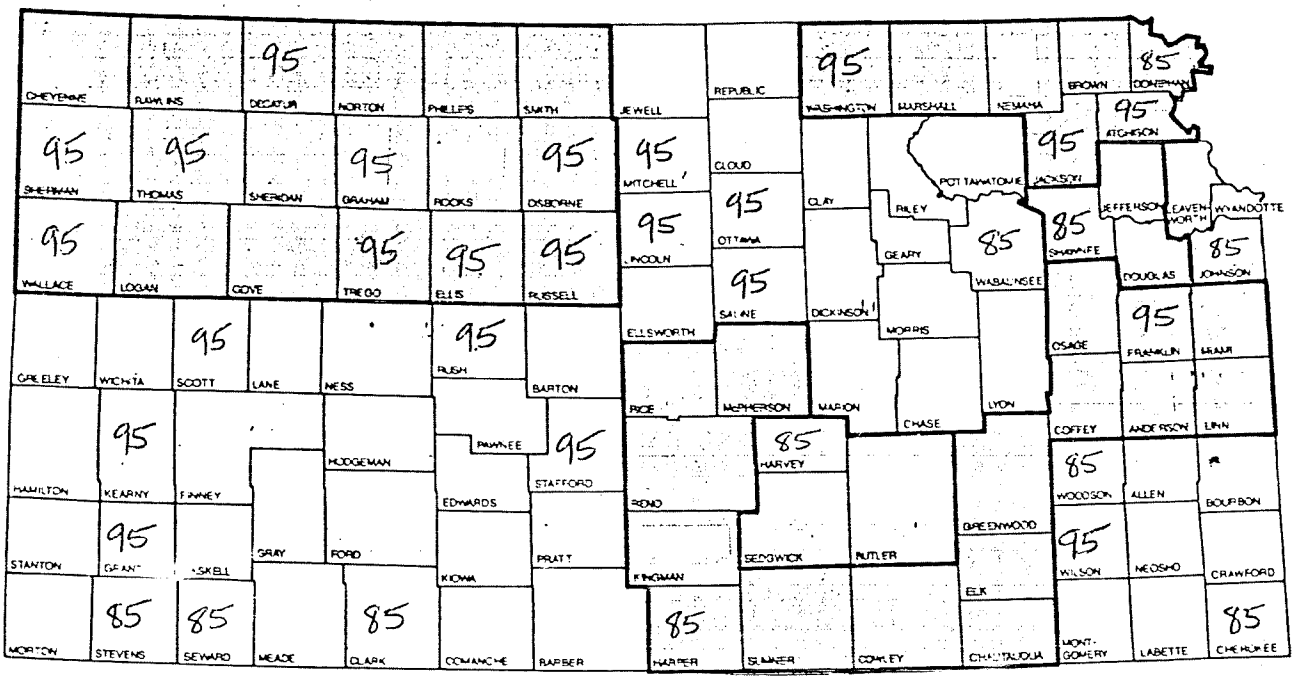
We appreciate the opportunity to testify on this issue.

Sandra Strand

Sandra Strand
Legislative Coordinator

KINH Kansans for Improvement of Nursing Homes, Inc.

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



KANSAS
COMMISSION ON VETERANS' AFFAIRS
Jayhawk Towers, Suite 701, 700 SW Jackson
Topeka, Kansas 66603 913-296-3976

STATEMENT OF STAN TEASLEY, EXECUTIVE DIRECTOR KANSAS COMMISSION ON VETERANS AFFAIRS BEFORE SENATE PUBLIC HEALTH AND WELFARE COMMITTEE SENATE BILL 405 MARCH 17, 1993

Madam Chairman and Members of the Committee:

The Kansas Commission on Veterans Affairs, the parent agency for the Kansas Soldiers' Home, appreciates the opportunity to present our views regarding Senate Bill 405.

The agency does not appear today in support or opposition of this legislation, but we do respectfully request an amendment, which would exempt the Kansas Soldiers' Home from the provisions of Senate Bill 405.

The nursing care section of the Kansas Soldiers' Home is currently licensed as a recuperative care center. The Kansas Soldiers' Home is the only licensed recuperative care center in the State of Kansas, and to my knowledge is the only facility ever to possess such a license in the State. It is my understanding that this licensure category was created for the Kansas Soldiers Home in the early 1970's by KDHE so that the nursing care facility would meet federal requirements for reimbursement purposes.

In reality, the nursing care center at the Kansas Soldiers' Home has operated as an intermediate care facility for the last decade and is mislicensed as a recuperative care facility. Based upon the recommendation of officials at KDHE, the agency is currently moving in the direction of obtaining ICF licensure for the nursing care section. When ICF licensure will be obtained is very directly related to funding issues, which are currently being reviewed in the legislative process. The facility is currently not funded at a level that ICF standards can be met.

Although Senate Bill 405 does have a provision for exemptions, we have no assurances that the exemption rules and regulations will contain the necessary provisions to include the situation faced by the Kansas Soldiers' Home. The direction the Kansas Soldiers' Home is now proceeding with on this licensure issue is not contrary to the intent of this legislation. In essence, the nursing care section at the Home has operated as an ICF facility for a number of years and agency management simply are in the process of correcting a mislicensure issue. Furthermore, the Legislature can be assured, if the legislation is adopted into law, that the Kansas Soldiers Home, in the future, will not move in a direction contrary to the intent of this legislation by virtue of the fact that the Home is budgetarily reviewed annually by the Legislature.

Madam Chairman, I would urge that this Committee consider an amendment to Senate Bill 405, which would exempt the Kansas Soldiers' Home from the provisions of this legislation.

Senate PH&W
Attachment #4
3-17-93

KHCA

Member of ahca

Kansas Health Care Association
221 SOUTHWEST 33rd STREET
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(913) 267-6003 • FAX (913) 267-0833

TESTIMONY

before the

SENATE COMMITTEE ON PUBLIC HEALTH AND WELFARE

by

John L. Kiefhaber, Exec. Vice President

KANSAS HEALTH CARE ASSOCIATION

Senate Bill 405

"AN ACT concerning medical nursing facilities; limitations on new and converted use."

Chairperson Praeger and Committee Members:

The Kansas Health Care Association, representing 213 professional nursing facilities throughout the State of Kansas, appreciates the opportunity to speak in support of the general concept of a temporary nursing facility construction ban, but in opposition to Senate Bill 405 as it reads now without amendments. While this bill would establish a moratorium on new construction, which the industry generally supports to help alleviate low occupancy rates in many parts of the state, the provisions that were included along with the construction moratorium make the measure unfair to many nursing facility providers.

The Kansas Health Care Association wants to see the Legislature pass a construction moratorium bill but would ask for the following changes before being able to support Senate Bill 405:

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1. Section 2. (a) (4) of the bill, prohibiting ICF-MR facilities from accepting nursing home residents in the future, is unrelated to the construction moratorium concept and is not a reasonable policy for the state and should be eliminated.

2. Section 2. (b) (1) and (2), concerning conversion of beds in NF-MH nursing facilities, is unrelated to the construction ban measure and should be amended out of the bill. SRS and Health and Environment already have authority to operate those medical programs for the good of those residents without an added measure here.

3. Section 4. of the bill should be amended to change the expiration of this act to July 1, 1995 or at the latest 1996. This would give the Legislature and the people of Kansas an opportunity to review and evaluate the effect of a construction ban before continuing the program.

In conclusion, I would like to point out that the waiver provisions in Section 3 of the bill should be used by the State to allow construction in the occasional case where local demand for nursing home services, above a local occupancy rate of 92 to 94 percent, requires new construction.

Thank you for the opportunity to speak in support of the construction ban concept, but in opposition to Senate Bill 405 if not amended.

3/17/93

Testimony on SB 405
Nursing Facility Moratorium

by the
Kansas Department on Aging

before the
Senate Public Health & Welfare Committee

March 17, 1993

The Kansas Department on Aging supports the implementation of a moratorium on nursing home beds. We have worked with the Department of Social and Rehabilitation Services and the Department of Health and Environment through the Long Term Care Action Committee to develop public policy on long term care issues. The moratorium is a joint proposal of our agencies.

Another focus of our joint planning has been housing options. In our recommendations, we have discussed the need for assisted living and adult family homes for people who cannot live alone and yet do not need nursing home care. Housing options are necessary if a moratorium is going to be implemented.

Medicaid Discrimination

SRS will be proposing amendments today to SB 405. Some of these amendments will improve the bill. For example, an amendment is needed to prohibit discrimination by adult care homes against medicaid applicants. Without this amendment, the moratorium will allow good and mediocre nursing homes to fill their beds with private pay applicants. In a more restricted market, medicaid applicants will be forced into the worst nursing homes. A U.S. General Accounting Office study of nine states in 1990 found (HRD-90-135):

> While excess bed supply can encourage overuse of nursing homes, controls that are too strict may limit access to nursing homes, especially for Medicaid recipients. (p. 32)

On the other hand, the GAO report found:

> Regulatory reforms that remove the source of payment as a criterion for admission can improve access for Medicaid recipients. (p. 4)

Assisted Living

Another amendment to SB 405 will be a step backward. If personal care beds are included in the moratorium, we will be closing down one of the housing options recommended by the Long Term Care Action Committee. In Alternative Housing Proposal #1, the Committee

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wrote:

> Although Kansas ranks very high nationally for the proportion of nursing facility (NF) beds per 1,000 persons age 65+, it ranks very low for the number of residential care (personal care in Kansas) beds. Personal care beds are less supervised than nursing facility (NF) beds and allow the residents more independence. They are also less costly than nursing facility beds.

Oregon, whose long term care model is one that many feel Kansas should emulate, has 14 times the number of residential care homes that Kansas had in 1986. Including such beds in SB 405 will widen the gap between Kansas and Oregon and make it much more difficult to reform our long term care system.

As proposed in SB 405, the moratorium will create an incentive to place private pay residents in personal care beds. This is a desirable outcome if the level of care is appropriate. This will not increase the state's obligation because most personal care beds are not subsidized.

We agree with the Long Term Care Action Committee when it recommended the development of more rather than less assisted living alternatives in Kansas.

Waivers

The Kansas Department on Aging supports the retention of Section 3 which provides for waivers to the moratorium. It is important to be able to consider the availability of community based long term care services (including living options) as well as the geographical proximity of long term care beds in implementing any moratorium. We would recommend that "may" be changed to "shall" in line 17 on page 2 of the bill to ensure the implementation of a waiver provision.

Conclusion

SB 405 merits your consideration and I thank you for this opportunity to testify. We hope that you will enact the bill so that Kansas can reverse its dependence on institutional care.

Proposed Substitute for SENATE BILL NO. 397

AN ACT concerning credentialing; defining health care personnel to include organizations or entities providing palliative care; amending K.S.A. 65-5001 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 65-5001 is hereby amended to read as follows: 65-5001. 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~~ persons who meet certain predetermined qualifications specified by the nongovernmental agency or association or the federal government.

(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

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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 (1) those persons whose principal functions, customarily performed for remuneration, are to render services, directly or indirectly, to individuals for the purpose of:

~~(1)~~ (A) Preventing physical, mental or emotional illness;

~~(2)~~ (B) detecting, diagnosing and treating illness;

~~(3)~~ (C) facilitating recovery from illness; or

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

(2) organizations or entities which provide palliative care.

(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.

(i) "Hospice" means a legally constituted organization or entity which provides comprehensive, continuous outpatient and home-like palliative care for terminally ill patients and their families.

(j) "Occupational group" or "health care occupation" includes, but is not limited to, organizations or entities which provide palliative care.

(k) "Palliative care" means treatment provided by a hospice directed at controlling pain, relieving other physical and emotional symptoms and focusing on the special needs of the patient and the patient's family, as they experience the dying process rather than treatment aimed at investigation and intervention for the purpose of care or prolongation of life.

Sec. 2. K.S.A. 65-5001 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.