

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 23, 1993 in Room 526-S of the Capitol.

All members were present except: Senator Jones, Excused

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

Others attending: See attached list

Conferees appearing before the committee:

The Chair announced **SB 397** was re-referred back to Committee in order to amend the bill. Staff provided information regarding HCFA standards that provide the hospice must be licensed in accordance with applicable federal, state and local laws and regulations, and if state or local law provides for licensing of hospices, the hospice must be licensed. It was noted that under federal rules where "license" is mentioned, it is referring to state standards or recognition. The Committee did not receive testimony from the Health and Environment or others that the hospice had to be licensed. (Attachment 1) In answer to a member's question, a hospice in Kansas can still be qualified under home health care licensure to receive medicare and not required to be licensed as a hospice.

A member commented that if Kansas were to provide for credentialing for hospice facilities, they would also have to meet the state's credentialing level in order to receive federal reimbursement for medicare, and the issue is what level of credentialing or any is important both for federal reimbursement, protection of the title "hospice," or for the protection of the consumer. Concern was also expressed regarding fees, who would pay those fees, and the cost of the program. The "hospice" name could be protected by credentialing in the form of registration, and by registration, it would be known how many hospices there are in the state.

Another member expressed support for the licensure of hospices, because it would provide protection to the public for quality control and professional services to the patient.

Staff reviewed a balloon copy of **SB 397** showing proposed amendments in relation to various testimony the Committee was given at an earlier meeting. (Attachment 2)

A member noted that the license issued would expire in one year after its date of issuance, and suggested a change might be considered in order to save administrative costs. An annual review was also discussed after the initial license was granted, and it was suggested the proposed amendment regarding the one-year license be left intact or amended later.

Another member noted that the bill provides for a paid hospice advisory council, and called attention to the fact that the Governor had indicated she would not support the addition of new boards. The fiscal impact of the bill was also discussed in which funds would possibly be needed for staff. KDHE will provide the appropriate figures as requested by Senator Hardenburger.

Senator Lee made a motion to adopt the amendments as proposed in the balloon of **SB 397**, seconded by Senator Langworthy. The motion carried. Senator Lee made a motion **SB 397 as amended** be recommended for passage, seconded by Senator Langworthy. The motion carried.

Discussion and Action on **HB 2136** - Smoking prohibited in all public places.

After committee discussion relating to whether the bill should be amended to include prohibiting smoking in day care homes, the statehouse and medical facilities, Senator Lee made a motion to amend the bill to prohibit smoking in medical facilities referring to the same language as in **SB 176** as the bill passed the Senate which would also include day care homes and the statehouse, seconded by Senator Walker. Senator Langworthy made a substitute motion to take out the day care homes in the proposed amendment, and recommended prohibiting smoking in medical facilities and the statehouse, seconded by Senator Papay. The motion carried. Senator Lee made a motion to recommend **HB 2136 as amended** favorably for passage, seconded by Senator Papay. The motion carried.

The meeting was adjourned at 10:45 A.M.

GUEST LIST

COMMITTEE: SENATE PUBLIC HEALTH AND WELFARE

DATE: 3-23-53

[illegible]

Standard§ 418.72 Condition of participation--
Licensure.

The hospice and all hospice employees must be licensed in accordance with applicable Federal, State and local laws and regulations.

(a) Standard: Licensure of program. If State or local law provides for licensing of hospices, the hospice must be licensed.

(b) Standard: Licensure of employees. Employees who provide services must be licensed, certified or registered in accordance with applicable Federal or State laws.

§ 418.74 Condition of participation--
Central clinical records.

In accordance with accepted principles of practice, the hospice must establish and maintain a clinical record for every individual receiving care and services. The record must be complete, promptly and accurately documented, readily accessible and systematically organized to facilitate retrieval.

Interpretive Guidelines§ 418.72 - Condition of participation--
Licensure.

(a) Standard: Licensure of program.

Self explanatory.

(b) Standard: Licensure of employees.

Self explanatory.

§ 418.74 - Condition of participation--
Clinical records.

The hospice must maintain an accurate clinical record for every individual admitted for care and services. The record reflects the course and effects of events with respect to the illness.

Survey Procedures§ 418.72 Condition of participation --
Licensure.

(a) Standard: Licensure of program. Be aware of State and local laws covering licensure of hospices. If State or local law requires licensing of hospices, verify, at the time of each survey and prior to certifying the hospice that it holds a current license.

(b) Standard: Licensure of employees. Confirm that there is an established procedure for verifying the validity of a hospice employee's license or registration at initial employment and annually thereafter. Professional and para-professional volunteers must meet all necessary standards, registration and licensure associated with their specialty area(s) the same as if they were salaried employees.

§ 418.74 Condition of participation --
Central clinical records.

The following actions should be taken with respect to clinical records:

o Interview appropriate staff to determine their knowledge of hospice policies and procedures regarding access to, and authority to document in the clinical records;

o Determine the accessibility of records by asking hospice employees to randomly select files for review;

*State PHEW
Attachment #1
9-23-93*

SENATE BILL No. 397

By Committee on Federal and State Affairs

2-26

AN ACT enacting the hospice licensure act; providing for licensing hospices; granting certain powers to and imposing certain duties upon the secretary of health and environment; providing for administrative procedures relating to licensure.

; amending K.S.A. 65-5112 and repealing the existing section

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

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

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

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

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

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

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

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

Senate P.H.C.
Attachment
3-23-93

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.

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, coor-
32 dinated 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.

licensed professional

(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.

(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.

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

less

a licensed hospice or as a hospice

(*)

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 benefit,
 6 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 according
 22 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 necessary
 29 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 recommendations
 40 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 and 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

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

Sec. 11. K.S.A. 65-5112 is hereby amended to read as follows: 65-5112. The provisions of this act shall not apply to:

(a) Individuals who personally provide one or more home health services if such persons are not under the direct control and doing work for and employed by a home health agency;

(b) individuals performing attendant care services directed by or on behalf of an individual in need of in-home care as the terms "attendant care services" and "individual in need of in-home care" are defined under K.S.A. 65-6201 and amendments thereto, if the individuals performing such services are not under the direct control and doing work for and employed by a home health agency; or

(c) any person or organization conducting a home health agency by and for the adherents of any recognized church or religious denomination or sect for the purpose of providing services for the care or treatment of the sick or infirm who depend upon prayer or spiritual means for healing in the practice of the religion of such church, religious denomination or sect; or

(d) a hospice licensed under the hospice licensure act.

Sec. 12. K.S.A. 65-5112 is hereby repealed.