

Approved: January 21, 1994
Date: Sh

MINUTES OF THE HOUSE COMMITTEE ON PUBLIC HEALTH AND WELFARE.

The meeting was called to order by Chairperson Joann Flower at 1:30 p.m. on January 18, 1994 in Room 423-S of the Capitol.

All members were present except:
Rep. Bishop, absent
Rep. Wells, excused

Committee staff present:

William Wolff, Legislative Research Department
Norman Furse, Revisor of Statutes
Sue Hill, Committee Secretary

Conferees appearing before the committee:

Sandra Strand, Legislative Coordinator, Kansans for Improvement of Nursing Homes
Martha Hodgesmith, Associate Director, Kansas Assn. of Rehabilitation Facilities
Michael C. Strouse, Executive Director, Community Living Opportunities
Joe Kroll, Director Bureau of Adult and Child Care, Department of Health/Environment
Joan Strickler, Kansas Advocacy & Protective Services
Pat Johnson, Executive Administrator, Kansas Board of Nursing (Written testimony only)

Others attending: See attached list

Chairperson Flower called the meeting to order welcoming all those present. She drew attention to minutes of January 12, 13th. Chair asked that members read these minutes carefully and if there are suggested corrections, please call the Committee Secretary by 5:00 p.m. tomorrow, (January 19, 1994).

HEARINGS BEGAN ON SB 249

Sandra Strand, Legislative Coordinator, Kansans for Improvement of Nursing Homes (KINH), offered hand-out, (Attachment No.1). She spoke in opposition to SB 249 because KINH believes the statutory change recommended would create more problems for the ICF/MR (Intermediate Care Facilities for persons with mental retardation) residents than it would solve for the providers. Existing training and certification requirements are essential for the protection of residents. To waive those requirements would allow for inconsistent care between facilities. KINH also objects to the exemptions proposed because unlicensed staff who do not complete certification training cannot be listed in the Kansas Nurse Aide Registry. If the State certification were waived for ICF/MR aides, they could not be listed in the registry. As a result ICF//MR facilities would be unable to comply with statutory requirements to check the registry, facilities would be unable to detect abusive employees. She drew attention to her hand-out containing information from the Kansas Nurse Aide Registry, plus, a report regarding documented abuses, and information from a Congressional Hearing of a Sub-Committee. Ms. Strand urged unfavorable consideration of SB 249. She answered numerous questions. She stated KINH doesn't think the statute needs to be changed, the curriculum needs to be changed.

There were suggestions in regard to possible amended language on page 2, line 31, i.e., "licensing agent shall prepare guidelines for instruction for the appropriate type of facility", or similar wording might be used.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON PUBLIC HEALTH AND WELFARE, Room 423-S
Statehouse, at 1:30 p.m. on January 18, 1994. CONTINUATION SHEET

Martha Hodgesmith, Associate Director, Kansas Association of Rehabilitation Facilities, offered hand-out (Attachment No. 2). She stated, nursing homes serve a large number of medically fragile older Kansans. ICF's/MR serve a large number of people who are mentally retarded whom are engaged in a wide range of work activities. They live in ICF's/MR to receive the support and assistance they require for non-institutional living. Staff members that serve these different populations require different training curricula. Training of ICF/MR staff to receive certified nurse Aid training which is not appropriate for those working to assist people with disabilities in order they may become more independent. She noted ICF/MR under current law are required to provide and pay for training programs which do not meet the needs of their staff, and in some cases are philosophically incompatible with the intent of ICF's/MR programs. She answered numerous questions.

Michael Strouse, Executive Director of Community Living Opportunities, Inc. (CLO) offered hand-out (Attachment No.3). He stated he cannot recall anyone that has been hired for their facility that is a (CNA), certified nurse aide. They hire people who have a four year degree, search for teachers with special backgrounds, i.e., special education, then train them in safety, good and proper care, protecting the rights of the patient. He noted they are opposed to adding another set of regulations that wouldn't necessarily apply to the situations described today of the mentally retarded population. He noted the training needs of staff for ICF/MR programs differs greatly from training for Adult Care Home programs. The primary mission of ICF/MR programs is to teach persons with developmental disabilities necessary skills allowing them to live more independently. The training mandated for Adult Care Homes in K.S.A.39-936 (CNA training) is not appropriate for direct care staff working in ICF/MR programs serving those persons with developmental disabilities. He stated, it would be more economic not to duplicate this kind of training requirement since is unneeded training. He spoke of concerns regarding the registry. He feels there is a false sense of security regarding the registry because there wouldn't be anyone on the registry necessarily that they would hire at Community Living Opportunities.. He stated that before hiring, CLO always performs KBI checks, background checks, criminal checks. He urged support for **SB 249**. He answered numerous questions.

Mr. Kroll stated, there was no need for concern that they are removing any protection from this client population. The training provided will continue to meet the needs of the clients. He noted the Department interprets the statute as not giving authority to include on the abuse registry, unlicensed persons that are not nurse aides. He noted there are no guarantees all offenses have been recorded on the register. The Director of the Survey Process of the Department of Health/Environment has assured Mr. Kroll today, that he is not concerned with the passage of **SB 249** and he feels it does not in any way compromise the safety of mentally retarded clients. Mr. Kroll answered numerous questions. (See Attachment No.4).

Joan Strickler, Executive Director, Kansas Advocacy/Protection Services offered hand-out, (Attachment No.5). She stated the Ks. Advocacy has no disagreement with the contention that training required of adult care home aides is not appropriate for persons who provide direct care for residents of ICF's/MR facilities. Training should be appropriate to the work required. There is concern however, as written, **SB 249** removes requirements for direct care employees of ICF's/MR to pass an examination following completion of instructional training and, subsequently, to be licensed and listed on the State register. She stressed that any modification to training requirements would provide some formal level of assessment of competency be required if persons are to work directly with residents of ICF/MR facilities. She answered questions.

Chairperson Flower directed attention to a hand-out provided by Pat Johnson, Executive Administrator, Kansas Board of Nursing, (Attachment No. 6). Ms. Johnson was unable to present her testimony in person today.

Mr. James Sherman, University of Kansas noted, he has been associated with Community Living Opportunities (CLO) for a number of years. **SB 249**. He noted, most of us agree, adequate and appropriate training of staff is vital. He noted adequate and appropriate supervision of staff is also vital. Appropriate is a key word, and needs to be defined as to how it relates to the needs of those persons receiving services. A high level of training and careful assessment of that training is important. No questions.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON PUBLIC HEALTH AND WELFARE, Room 423-S
Statehouse, at 1:30 p.m. on January 18, 1994. CONTINUATION SHEET

Mr. Cole Hargett, R.N., Olathe Medical Center, and a member of CLO Human Rights Committee. He stated concerns with changing the curriculum related to in SB 249. He noted if the curriculum is to be redone, it will more than likely be redone by the medical community, which will keep the focus towards a medical type curriculum, which is not applicable to the needs of the mentally retarded population. He is concerned that if the training of certified nurse aides in ICF/MR continues, it will be taking funding away from facilities that do not need or use certified nurse aides. He urged support of SB 249. He answered questions.

HEARINGS CONCLUDED ON SB 249.

Chair adjourned the meeting at 3:03 p.m.

The next meeting is scheduled for January 19, 1994.

HOUSE PUBLIC HEALTH AND WELFARE COMMITTEE

DATE _____

[illegible]



Kansans for Improvement of Nursing Homes, Inc.

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

TESTIMONY PRESENTED TO
THE HOUSE COMMITTEE ON PUBLIC HEALTH AND WELFARE
CONCERNING SB 249

January 18, 1994

Madam Chair and Members of the Committee:

KINH agrees that the needs of residents of intermediate care facilities for the mentally retarded (ICF/MR) are different than the needs of residents of medically oriented adult care homes. We also agree that the training for direct care staff in ICF/MR facilities should be directed toward meeting the specific needs of the residents with mental retardation. It is a fact that the current Kansas Adult Care Home Aide Curriculum (issued in June 1983) is focused primarily on the needs of geriatric residents.

KINH opposes SB 249 because we believe the resulting statutory change would create more problems for the ICF/MR residents than it would solve for the providers. KINH believes the existing training and certification requirements are essential protections for residents and should be maintained. Waiving the state requirement for this minimum standard of staff competency would allow for inconsistent care between facilities. The good facilities would likely continue to provide appropriate training for their aides; the marginal and poor facilities would likely take advantage of this opportunity to "economize" on training.

KINH also objects to the exemption because unlicensed staff who do not complete certification training cannot be listed in the Kansas Nurse Aide Registry. This registry lists all Certified Nurse Aides, Limited Nurse Aides, Certified Medication Aides, and Certified Home Health Aides, and indicates any aides with confirmed findings of abuse or neglect. All adult care homes are required to check the registry before employing an aide, and ICF's/MR are prohibited from employing anyone who has been confirmed by a state administrative process.

If the state certification requirement were waived for ICF/MR aides, they could not be listed in the registry. As a result, ICF/MR facilities would be unable to comply with the statutory requirement to check the registry, facilities would be unable to detect abusive employees, and there would be nothing to prevent these uncertified employees from moving from facility to facility.

In a year-long Congressional investigation of residential living programs for the mentally retarded and developmentally disabled, the Subcommittee on Regulation, Business Opportunities, and Technology uncovered recurring problems of poorly trained and abusive staff, inadequate oversight of medication, theft of resident possessions, and poor management practices. Representative Ron Wyden, Chairman of the subcommittee, while recognizing there are many good providers in the field, commented in a hearing on March 29, 1993:

PHW
1-18-94
Allen #1

With respect to staff at the facilities, the subcommittee found a pattern of inadequate pay and undertraining.

....States must establish minimal training requirements for facility employees. Again, authorities need flexibility in designing training programs, but, given the fact that the subcommittee found in State after State abusive treatment that can be traced to poorly trained and managed staff, training must be improved.

The federal standards for staff training, which state surveyors from the Department of Health and Environment follow, are broad guidelines, rather than a specific curriculum geared to the special needs of ICF/MR residents. The federal guidelines require state surveyors to evaluate the adequacy of a facility's staff training program based on outcomes of resident care. However, in a May 1993 report, State Progress in Carrying Out the Nursing Home Survey Reforms, The Office of Inspector General found:

State survey staff are experiencing problems adjusting to the new outcome-focused survey.

State survey agencies' relationships with nursing homes are increasingly contentious as the reforms provide new incentives for nursing homes to refute deficiencies. This can result in surveyors citing fewer or less serious deficiencies.

Thus, the state surveyors might be unable to recognize the consequences of inadequate staff training on resident care, or even if the inadequacy were recognized, the surveyor might not cite it as a deficiency, and the problems could continue uncorrected until a facility's next annual survey.

KINH maintains that the sensible solution to the problem of an inadequate curriculum for ICF/MR staff is to amend the curriculum, rather than to amend the statute. KINH would support the replacement of the current CNA training requirement with a training curriculum and certification that is more appropriate for providing care for residents with mental retardation and developmental disabilities.

We are strongly opposed to the outright exemption of the training and certification requirements for ICF/MR facilities, and we ask the committee to report this bill unfavorably.

Respectfully submitted,

Sandra Strand

Sandra Strand
Legislative Coordinator

attachments: 2

PNW
1-18-94
Attn #1-2
Pg 2 of 7



Rec'd KINH
11/15/93

Department of Health and Environment

Robert C. Harder, Secretary

(913) 296-6877

Kansas Nurse Aide Registry
State Administrative Confirmations
Quarterly Abuse Report

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

A nursing facility may not employ certified nurse aide (CNA) listed on this report whose notice of finding was issued after April 1, 1992. A nursing facility may employ a CNA listed on this report aide whose notice of finding was issued prior to April 1, 1992; this is indicated by an asterisk following the state administrative confirmation date. In addition, any aide who has been found guilty by a court of law for abuse, neglect, or mistreatment of individuals is not eligible for employment as a nurse aide.

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

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

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

PNKLL
1-18-94
Att #1-3
09377

KANSAS NURSE AIDE REGISTRY STATE ADMINISTRATIVE HEARING QUARTERLY ABUSE REPORT

11/05/93

Page 19

AIDE ID #	CNA CROSS REF	AIDE'S NAME LAST, FIRST MI	CERTIFICATES AIDE HOLDS	ACTION AGAINST	WAIVE HEARING	CONFIRMATION DATE	FINAL FINDINGS	AIDE'S DISPUTE
078617		GARNER, TINA S	CNA	CNA	E	Y	06/11/93	IN FEBRUARY, 1993, MS. GARNER TOOK TWO CHECKS FROM A FEMALE RESIDENT'S ROOM AND ATTEMPTED TO CASH THEM AT A LOCAL STORE.
016140		GEORGE, EDITH	CNA, CMA	CMA	A	Y	08/02/91*	MS. GEORGE DID SLAP A RESIDENT.
062153	011305	GLENN, NORMA J	SIDEBOTTOM CNA	CNA	A	N	08/26/93	THE SECRETARY FINDS THAT MS. GLENN SLAPPED A FEMALE RESIDENT'S LEG AND THAT SHE HAS COMMITTED AN ACT OF ABUSE.
073433		GOFF, HEATHER L	SIMMONS CNA, HHA, CMA	CNA	E	Y	03/29/93	ON OR ABOUT DECEMBER 14, 1992, MS. GOFF TOOK ITEMS OF JEWELRY FROM A FEMALE RESIDENT.
053804		GRABLE, LINDA F	CNA	CNA	A	Y	08/09/91*	MS. GRABLE DID CAUSE A RESIDENT TO CHOKO BY FEEDING HER WITH A SYRINGE.
042959	000000	GRACE, JAMES	CNA	CNA	A	N	10/17/93	THE PRESIDING OFFICER FINDS THAT ON OR ABOUT APRIL 7, 1992, MR. GRACE WAS OBSERVED THREATENING TO PUNCH A FEMALE RESIDENT IN THE NOSE FOR USING HER CALL LIGHT.

PHC
 1-18-94
 Ctlm #1-4
 09/4/97

* This person's notice of finding was issued prior to April 1, 1992. A nursing facility may choose whether or not to employ this individual.

GROWTH OF SMALL, RESIDENTIAL LIVING PRO-
GRAMS FOR THE MENTALLY RETARDED AND
DEVELOPMENTALLY DISABLED

HEARING

BEFORE THE

SUBCOMMITTEE ON REGULATION, BUSINESS
OPPORTUNITIES, AND TECHNOLOGY

OF THE

COMMITTEE ON SMALL BUSINESS
HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRD CONGRESS

FIRST SESSION

WASHINGTON, DC., MARCH 29, 1993

Printed for the use of the Committee on Small Business

Serial No. 103-8



U.S. GOVERNMENT PRINTING OFFICE

WASHINGTON : 1993

66-955-

For sale by the U.S. Government Printing Office
Superintendent of Documents, Congressional Sales Office, Washington, DC 20402

ISBN 0-16-041152-1

pared statements—Continued	Page
D'Luge, Thomas, with attachments—Continued	325
Charts and graphs	151
Ellis, Anita	331
Farkas, Ralph D.	379
Jones, Elizabeth, with attachments	391
Letters and memos from miscellaneous advocacy organizations	411
Klein, Jay, with attachments	445
Photographs from slides shown during testimony	168
Medonis, Alphonse V., with attachments	175
Massachusetts General Laws, chapter 29	184
State Auditors Report on Certain Activities of:	248
Work, Inc.	268
Servess and Darso	294
Miscellaneous articles	157
Response to Chairman Wyden's request for additional information	164
Oakes, Joan B. and Gerald C., with attachments	367
Sexuality Education and Enrichment for the Developmentally Disabled, case consultation	58
Richardson, Toni	600
Staff memo and miscellaneous newspaper articles	598
University of Illinois at Chicago, Dale Mitchell, statement	604
U.S. Occupational Safety and Health Review Commission, Donald G. Wiseman, Commissioner, letter	610
Voice of the Retarded, Polly Spare, president, letter to Chairman Wyden	54
Walsh, Jeanne Anne, letter to Chairman Wyden	
Wyden, Hon. Ron, opening statement	

GROWTH OF SMALL, RESIDENTIAL LIVING PROGRAMS FOR THE MENTALLY RETARDED AND DEVELOPMENTALLY DISABLED

MONDAY, MARCH 29, 1993

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON REGULATION, BUSINESS
OPPORTUNITIES, AND TECHNOLOGY,
COMMITTEE ON SMALL BUSINESS,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:16 a.m., in room 2359-A, Rayburn House Office Building, Hon. Ron Wyden (chairman of the subcommittee) presiding.

Chairman WYDEN. The subcommittee will come to order.

Today, the subcommittee continues its examination of new and emerging health care services dominated by the small business sector. The question before us at today's hearing is whether Government regulation of small group homes for the mentally retarded and the developmentally disabled—a \$11-billion-per-year business which has developed largely within just the last decade—protects clients against dangerous or abusive treatment and protects the taxpayer against fraudulent or wasteful spending of billions in public reimbursement dollars.

This subcommittee has found substantial evidence that patients and taxpayers are frequently being exploited by small businesses that run homes for the mentally retarded and the developmentally disabled. While most providers appear to be contentious and professional guardians of some of the Nation's most vulnerable citizens, many others may be doing a poor or even criminal job of preserving a very large public trust.

A key measure of our society is how it treats its less fortunate. For some of the 300,000 Americans who are living in 40,000 of these homes, many of them for-profit facilities receiving an enormous amount of public reimbursement, our society has failed its obligation.

The subcommittee has found evidence of individuals, who were retarded and severely disabled, being raped, beaten, and even killed in these facilities. Medicines were misadministered with sometimes disastrous results. The clients had their possessions stolen, and they were shut off from family and friends. State public officials charged with oversight had little or no knowledge of conditions within their homes or, at best, they only learned after very serious problems had occurred. The incidents detailed in the sub-

committee memo deaden the soul as well as chill the blood. Our country simply must do better.

The subcommittee found evidence that through complex financial organizations managers of so-called nonprofit homes can make enormous amounts of money by servicing shell facilities through overpriced sweetheart deals, and the stakes are very large financially. For example, in 1988, providers in this field secured \$4 billion from Medicaid, \$3.6 billion from title XIX under the Social Security Act, and an additional \$2.1 billion from Federal supplemental security insurance.

In State after State, small providers, operating hundreds of homes and programs in geographically dispersed locations, have successfully evaded quality assurance oversight. The system that is supposed to protect the developmentally disabled is swamped. Case workers responsible for oversight of these programs are critically overburdened. Some may have over 100 cases each.

Too often, providers are left to operate on a sort of "honor" system. State authorities believe that conditions are up to standard primarily because they have been informed that is the case by the care-giving company.

With respect to staff at the facilities, the subcommittee found a pattern of inadequate pay and undertraining. One academic expert, who has examined the impact of staff pay and benefits at these facilities, noted that providers too often pay wages competitive with the fast-food sector. As a result, the consistency of care and training is very much left to question. The pay and benefits problem mirrors a similar issue revealed last year in the subcommittee's investigation of quality of care in rehabilitation of the traumatically brain-injured.

There appear to be conflicting and confusing jurisdictional problems between Federal and State authorities. The provider community includes several multi-State companies, each featuring scores of facilities. Under Federal policy, the individual States have most of the responsibility for tracking the financial dealings of the large providers, an audit job that is simply beyond the ability of most State programs.

It is clear to the chair of this subcommittee that Federal oversight and accountability over these homes must be strengthened. At present, once a State obtains Federal Medicaid dollars to provide care for the retarded and the developmentally disabled, the job of assuring quality, the adequacy of auditing standards, and the screening of home operators is then left to State regulators whose performance is spotty at best.

The witnesses today will testify, and the chair agrees, that there are many good providers in this field. Government has encouraged their development as an antidote to the poor conditions and oppressive quality of too many large State hospitals, but the witnesses will also add that the wide open regulatory nature of the environment, coupled with a steady flow of poorly monitored public spending, has created substandard and even dangerous care for too many of the patients.

In the last decade, thousands of developmentally disabled citizens have left the large institutions for the small, which promise to house, train, and employ them. The chair believes, however, that in

too many cases the worst abuses of the large institutions are being recreated in the miniature. There is a great need for improved State advocacy programs. Today, advocates can only address the most egregious abuses while far more stealthy providers, doing only the bare minimum necessary to meet State paperwork requirements, get by, and clients languish amid depredation and neglect.

It is possible to have enhanced standards of care for the vulnerable while still keeping the regulatory gate open for the development of innovative programs and good quality, new providers. Indeed, in many States a principal problem is that there is no competition, and there are too few providers. The subcommittee has been told, for example, that States may be stuck with a poor operator simply because there is no other provider ready, willing, and able to step into the breach.

We are going to hear from a number of experts from around the country discussing various problems. Al Medonis of the Massachusetts Auditor's Office will tell how his State may have lost as much as \$50 million in the last 4 years to dubious business persons who set up shell corporations to build and operate small group homes and use questionable lease-backs and profiteering at the expense of their clients.

Other witnesses, family members, and a former employee of a group home will tell even more disturbing tales of clients raped in homes operated for years under the nose of State authorities. We will hear of home operators who failed to notify guardians when clients wander off and have kept abusive employees on the payroll long after problems arose. We will also hear descriptions of underpaid and undertrained employees and of States that prop up poor providers because they have nowhere else to place clients.

As we look to the future of health care reform in this country, and particularly the long-term needs of the developmentally disabled, it is critical that we have better quality assurance programs. States must develop an approved system of quality assurance that meets standards sufficient to protect the vulnerable. The Federal Government should work with the States so that each State has a quality assurance program designed and in place to qualify for a Medicaid waiver.

In addition, it would be in the public interest to establish a national information exchange on quality assurance and enhancement efforts. States and providers need quick and reliable access to programs that work. States also need to know quickly about the track record of providers and their personnel in order to weed out the incompetent and the crooks.

Finally, States must establish minimal training requirements for facility employees. Again, authorities need flexibility in designing training programs, but, given the fact that the subcommittee found in State after State abusive treatment that can be traced to poorly trained and managed staff, training must be improved.

The subcommittee would discourage States from overreliance on any single provider and encourage them to beef up financial auditing of providers. Abusive providers, providers with a history of violations, need to be run out of business quickly.

1-18-94
1-17-94
Att # 778



Kansas Association of Rehabilitation Facilities

Jayhawk Tower • 700 Jackson • Suite 212 • Topeka, Kansas 66603-3731
(913) 235-5103 • Fax (913) 235-0020

TO: House Public Health and Welfare Committee
Representative Joann Flower, Chair

FROM: Kansas Association of Rehabilitation Facilities
Martha Hodgesmith, Associate Director

REGARDING: Senate Bill 249

DATE: January 18, 1994

BACKGROUND:

Senate Bill 249 was introduced and unanimously adopted last year in the Senate to address a problem experienced by private sector intermediate care facilities for persons with mental retardation (ICF's/MR). At issue is the appropriateness of current state statutory training requirements for ICF/MR staff.

STATUTORY ISSUE:

Under current law, ICF's/MR are classified as adult care homes, along with nursing homes and long-term care hospitals.

Nursing homes serve a large number of medically fragile older Kansans. Long-term care hospitals also provide service to older Kansans as well as others whose needs are primarily medical (e.g. by illness, injury or stroke). ICF's/MR serve people who are mentally retarded whom are engaged in a wide range of work activities. They live in ICF's/MR to receive the support and assistance they require for day-to day, non-institutional living.

The staff that serve these different populations require different training curricula. The current law, however, requires ICF/MR staff to receive Certified Nurse Aid (CNA) training. This training is designed for those whose work is to assist in nursing care. This training is not appropriate for those whose work is to assist people with disabilities to become more independent. Thus ICF's/MR under current law are required to provide and pay for training programs which do not meet the needs of their staff, and in some cases are philosophically incompatible with the intent of ICF/MR programs.

Senate Bill 249 addresses this issue without weakening the training requirements for ICF/MR programs.

CURRENT TRAINING REQUIREMENTS FOR ICF/MR STAFF:

Under federal and state regulatory language, ICF's/MR, including our member organizations in the private sector and the state's MR hospitals, are already required to meet training needs appropriate for their work setting.

- *** Training must be available for new employees and must be continuing throughout their employment.
- *** Training focuses on client skills and competencies, so that clients can become more able to meet their own developmental, behavioral or medical needs.
- *** Training includes teaching staff the strategies by which they can appropriately intervene to manage the inappropriate behavior of clients.

PHW
1-18-94
attm # 2

Outcome: trained staff must be able to put into practice the skills and techniques needed to implement individual program plans for each client.

These training principles are monitored and enforced by Health and Environment inspectors as required by federal law.

The CNA training required under current law is not programmatically appropriate for these facilities and increases the costs of such programs. Additionally, it is very difficult to recruit staff who have already attained this certification to work in ICF's/MR since most who have received this training generally feel their experience is more applicable in working with the elderly than with programs for the developmentally disabled.

Opposition to the bill last year centered on two issues.

First, it was asserted that without state sponsored training, the registration of ICF/MR employees would end. This is incorrect.

The requirement to register ICF/MR employees into a state registry (in order to screen all such persons for prior involvement in abuse, neglect or exploitation cases) will remain in this statute (see page 3, lines 1-5 of the bill).

Secondly, it was asserted that there would be no longer be a guarantee for adequate training without the current statute.

This, too, is incorrect. Federal laws requiring training are in place and are already more effective than this law in assuring that appropriate training is provided for ICF/MR staff. To preserve state oversight of training, the Senate committee added language that requires an exception can only be granted to those facilities wherein the state has certified that a satisfactory training program is in place.

SUMMARY:

We support strong training requirements for all programs that serve people with disabilities, and we intend to maintain training as a high priority for the members of our association. It is not only our priority, it is federally required. We believe that the removal of the state training requirement language as referenced in Senate Bill 249, will enable us to make better use of our training resources, thereby benefitting the people we serve.

We would appreciate your consideration of this matter and respectfully ask for your support for Senate Bill 249.

PNW
1-18-94
Attn # 2-2
Pg 297

Testimony Submitted in Support of Senate Bill No. 249

Submitted to the Public Health and Welfare Committee
January 18, 1994

Michael C. Strouse, Executive Director of Community Living Opportunities,
Inc. an accredited community-based program serving persons with
developmental disabilities in Johnson and Douglas Counties.

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

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

PHW
1-18-94
Attmt #3

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

- ☒ Many ICF/MR programs find it difficult to hire CNAs who already meet the training requirements of KSA 39-936 to work with persons with developmental disabilities, since most CNAs, due to their training, prefer to care for medically fragile and geriatric persons. If persons working in an ICF/MR did not have to be trained as CNAs, ICF/MR programs would likely be able to recruit persons who are more interested in serving persons with developmental disabilities.
- ☒ State-operated institutions for persons with developmental disabilities, which are also licensed as ICFs/MR, are not required to utilize CNA training curriculums or hire CNAs as direct care staff. Unlike private ICF/MR programs, our state institutions are not additionally classified as Adult Care Homes. Otherwise, public and private ICF/MR programs are identically licensed and are subject to identical standards of care. There is no qualitative or programmatic reason why private ICF/MR and public ICF/MR programs should be viewed differently with respect to the qualifications and training for direct care staff.
- ☒ Based upon available data compiled by the Department of Social and Rehabilitation Services, private ICF/MR programs and other community programs not licensed as an ICF/MR do not serve substantially different populations within community settings. Community providers not licensed as an ICF/MR are also not required to provide CNA training for direct service employees. Such programs, like state institutions, are allowed and encouraged to develop training programs to meet the individual needs of persons that they serve, and similarly, they are governed by alternative regulations to assure that the needs of the persons they serve are met.

We join with other community providers, the Kansas Association of Rehabilitation Facilities, and the Department of Health and Environment in support of Senate Bill No. 249, which exempts private community Intermediate Care Facilities serving persons with mental retardation (ICF/MR programs) from KSA 39-936 provisions which require direct care staff to be trained as Certified Nurses Aides.

PHW
1-18-94
Attn # 3-2
pg 287

State of Kansas

Joan Finney, Governor



Department of Health and Environment

Robert C. Harder, Secretary

TESTIMONY PRESENTED TO
THE HOUSE PUBLIC HEALTH AND WELFARE COMMITTEE

by

THE KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT

Senate Bill 249

Pursuant to K.S.A. 39-923, nursing facilities for the mentally retarded are licensed as adult care homes. This bill seeks to amend K.S.A. 39-936, which requires unlicensed employees of adult care homes to complete a specified course of education and training approved by KDHE.

This requirement originated in the mid-70s when the distinction between geriatric care and care for the mentally retarded was not as refined or distinct. Since that time, care for the mentally retarded has become specialized and provided in distinct facilities. The requirement to train unlicensed staff in such facilities as geriatric aides is no longer appropriate or necessary to assure appropriate care. SB 249 eliminates the requirement that unlicensed personnel in such facilities be trained and certified as geriatric nurse aides by providing KDHE the authority to grant an exception upon finding that an appropriate training program for such employees is in place in the MR facility. Sufficient federal and state regulations speaking to the training requirements of such staff exist to assure that appropriate training continues if this bill is passed.

KDHE respectfully requests that SB 249 be passed favorably out of committee.

Presented by: Joseph Kroll, Director
Bureau of Adult and Child Care
January 18, 1994

PH:CC
1-18-94
Attn # 4

Kansas Advocacy & Protective Services, Inc.

2601 Anderson Ave., Suite 200, Manhattan, KS 66502-2876

(913) 776-1541, FAX (913) 776-5783

Kansas City Area
6700 Squibb Rd.
Suite 104
Mission, KS 66202
(913) 236-5207

Wichita Area
255 N. Hydraulic
Wichita, KS 67214
(316) 269-2525

TO: The House Committee on Public Health & Welfare
Representative Joann Flower, Chair

FROM: Kansas Advocacy and Protective Services
Joan Strickler, Executive Director

RE: S.B. 249

DATE: January 18, 1994

Chairperson

James Maag
Topeka

Vice Chairperson

Robert Anderson
Ottawa

Secretary

Jack Shriver
Topeka

Treasurer

W. Patrick Russell
Topeka

Rep. Rochelle Chronister
Neodesha

Ross O. Doyen
Concordia

Harold James
Liberal

Sen. Barbara Lawrence
Wichita

Raymond L. Spring
Topeka

Rep. George Teagarden
LaCygne

W.H. Weber
Topeka

Liaison to the Governor
Renee Gardner

Chairman Emeritus

R.C. Loux
Topeka

Executive Director

Joan Strickler

KAPS assists disabled children and adults in gaining access to the rights and services to which they are entitled. We administer two federal programs -- protection and advocacy as provided for by the Developmental Disabilities Act (P.L. 94-103 as amended), and the Protection and Advocacy for Mentally Ill Individuals Act (P.L. 99-319 as amended). We also administer the Kansas Guardianship Program.

We have no disagreement with the contention that training required of adult care home aides is not appropriate for persons who provide direct care for residents of ICF/MR facilities. Training certainly should be appropriate to the work required.

There is concern that it would appear S.B. 249, as written, removes requirements for direct care employees of ICF's/MR to pass an examination following completion of instructional training and, subsequently, to be licensed and listed on the State registry.

Persons receiving services from ICF's/MR often have serious communications problems, health problems, and can have challenging behaviors that may be difficult for inadequately trained staff to know how to deal with appropriately. It is important that hands-on staff be competent, not only to assure for adequate treatment and habilitation, but to lower risk factors that can lead to incidents of abuse, neglect and exploitation.

We would hope that any modification to training requirements would provide that some formal level of assessment of competency be required if persons are to work directly with residents of ICF/MR facilities.

Respectfully submitted,


Joan Strickler

Executive Director

KAPS has been charged with developing systems of advocacy and protective services in Kansas relevant to the provisions of Sec. 113 of P.L. 94-103, as amended; the Developmental Disabilities Services and Facilities Construction Act, and P.L. 99-319, the Protection and Advocacy for Mentally Ill Individuals Act.

PAW
1-18-94
Attn #5

Kansas State Board of Nursing

Landon State Office Building
900 S.W. Jackson, Rm. 551
Topeka, Kansas 66612-1230
913-296-4929
FAX 913-296-3929



Patsy L. Johnson, R.N., M.N.
Executive Administrator
913-296-5752

TO: The Honorable Representative Joann Flower, Chairperson
and Members of the Public Health & Welfare Committee

FROM: Patsy L. Johnson, R.N., M.N.
Executive Administrator
Kansas State Board of Nursing

DATE: January 18, 1994

RE: SB 249

The Kansas State Board of Nursing understands that adult care homes for the mentally retarded are currently licensed by the Department of Health and Environment. Because the Board of Nursing is concerned for the nursing care being given to all citizens in Kansas including the mentally retarded, the Board would recommend that the exception in SB 249 not be added to K.S.A. 39-936 (c).

The Board agrees that unlicensed employees working with the mentally retarded should attend appropriate educational programming. In K.S.A. 39-936 (c) (1), the content and administration of the 40 hours training program has to comply with the rules and regulations of the Department of Health and Environment, the licensing agency (page 2, lines 5 and 6). It would seem that a 40 hour standardized training program could be developed for the education of unlicensed care takers of the mentally retarded by revision of rules and regulations by the licensing agency. The individuals taking the course could be tested and then certified in mental retardation. If certified, then employers would know that an applicant had minimum education in that specialty area. With the current wording in SB 249, the educational programs could differ significantly. The wording also does not require an examination following the course to establish that learning has taken place.

PNW
1-18-94
Attn #6

Janette Pucci, R.N., M.S.N.
Education Specialist
296-3782

Patricia McKillip, R.N., Ph.D.
Education Specialist
296-3782

Diane Glynn, R.N., J.D.
Practice Specialist
296-4325

Mark S. Braun, J.D.
Assistant Attorney General
Disciplinary Counsel
296-4325

The Board of Nursing is also concerned that by not certifying these unlicensed individuals working in adult care homes for the mentally retarded, there may be an exemption from reporting such individuals to the state registry for patient abuse (page 3, lines 8-17). Employers need a contact to establish that potential employees do not have a history of patient abuse. This would be missing for these unlicensed individuals.

In summary, the Kansas State Board of Nursing does not believe that the change in SB 249 needs to be made. By revision of the rules and regulations by the Department of Health and Environment a new educational certification could be established for unlicensed employees in adult care homes for the mentally retarded. A standardized educational program would prepare them in the special care needed for mentally retarded patients and establish minimum competency. Unlicensed individuals who are abusing patients would still have to be reported to the state registry.

Thank you.

PHW
1-18-94
Attn #6-2
Pg 2 of 2