

MINUTES OF THE HOUSE AGING & LONG-TERM CARE COMMITTEE

The meeting was called to order by Chairman Bob Bethell at 9:04 am. on February 15, 2011, in Room 144-S of the Capitol.

All members were present except:

Representative Scott Schwab – absent  
Representative Ron Worley – excused  
Representative Kay Wolf – excused  
Representative Broderick Henderson – excused  
Representative Brian Weber - excused

Committee staff present:

Katherine McBride, Office of Revisor of Statutes  
Iraida Orr, Kansas Legislative Research Department  
Craig Callahan, Kansas Legislative Research Department  
Gordon Self, Office of Revisor of Statutes  
Evelyn Walters, Committee Assistant

Conferees appearing before the Committee:

Cindy Luxem, Kansas Health Care Association  
Joe Ewert, Kansas Association of Homes and Services for the Aging  
Mitzi McFatrach, KS Advocates for Better Care  
Belinda Vierthaler, Ombudsman

Others attending:

See attached list.

Chairman Bethell asked for a motion to approve the minutes of the committee meetings for January 18, 20, 25, 27, February 3, 8, and 10. Representative Moore made the motion to approve the minutes, seconded by Representative Gonzales. The motion carried.

Chairman Bethell opened the Hearing on:

**HB 2148 – Increasing the certification requirements for Continuing Care Retirement facilities**

Katherine McBride, Office of Revisor of Statutes, reviewed the bill contents. A question was asked by Representative Moore. Katherine provided clarification of a technical amendment to be presented later.

Proponent:

Cindy Luxem, Kansas Health Care Association, testified in support of the bill (Attachment 1). Questions were asked by Representative Flaharty.

Neutral:

Joe Ewert, Kansas Association of Homes and Services for the Aging provided neutral testimony. No questions were asked. (Attachment 2).

No other conferees on **HB 2148**.

Chairman Bethell closed the hearing on **HB 2148** at 9:19 am.

Chairman Bethell opened the hearing on:

**HB 2110 - Establishment of LTC Ombudsman advisory committee on advocacy options within the home**

Katherine McBride, Office of the Revisor of Statutes, reviewed the bill contents. No questions were asked.

Chairman Bethell asked Representative Flaharty, Ranking Minority to chair meeting while he stepped out to take page pictures.

CONTINUATION SHEET

Minutes of the House Aging & Long Term Care Committee at 9:00 am on February 15, 2011, in Room 144-S of the Capitol.

Proponents:

Mitzi McFatrach, KS Advocates for Better Care, spoke in support of the bill. (Attachment 3). Questions were asked by Representative Flaharty.

Belinda Vierthaler, Ombudsman, spoke in support of the bill. (Attachment 4). Questions were asked by Representative Moore and Representative Flaharty.

No other conferees on **HB 2110**.

Ranking Minority, Representative Flaharty closed the hearing.

The next meeting is scheduled for February 17, 2011.

The meeting was adjourned at 9:36 am.

**HOUSE AGING AND LONG TERM CARE COMMITTEE**

DATE: 2/15/11

[illegible]

**PLEASE USE BLACK INK**



117 SW 6th Avenue, Suite 200  
Topeka, Kansas 66603  
(785) 267-6003 Phone  
(785) 267-0833 Fax  
www.khca.org Website  
khca@khca.org E-mail

kcal

ahca.

February 15, 2011

Aging and Long Term Care Committee

Mr. Chairman and Committee members

Today's seniors are faced with many attractive options for retirement living. One of these options is the continuing care retirement community, or CCRC. Continuing Care Retirement Communities are senior communities that provide different levels of care based on what each resident needs over time. This is sometimes called "life care" and can range from independent living in an apartment to full-time care in a nursing home.

In Kansas, we have a number of these communities and all indications are they are providers in good standing. Often, these communities require rather high fees to move into their communities. It is important to protect the funds because the seniors expect these dollars to last their lifetime.

I believe HB 2148 is a good idea until we have a definition in our Adult Care Home Statutes. Once the home is licensed and in operation, I am not aware of any entity that reviews and monitors the financial condition of the CCRC providers.

We support HB 2148.

Cindy Luxem

CEO, Kansas Health Care Association/Kansas Center for Assisted Living

HOUSE AGING & LTC  
DATE: 2/15/11  
ATTACHMENT #1



**To: Chairman Bethell, and Members House Aging and Long Term Care Committee.**  
**From: Joe Ewert, KAHSA Government Affairs Director**  
**Date: February 15, 2011**  
**Re: HB 2148**

### **Testimony on HB 2148**

Thank you, Mr. Chairman, and Members of the Committee, for this opportunity to speak to you on HB 2148. My name is Joe Ewert and I am here on the behalf of the Kansas Association of Homes and Services for the Aging. KAHSA represents 160 not-for-profit long term care provider organizations throughout the state. Over 20,000 senior Kansans are served by our members, which include retirement communities, nursing homes, hospital-based long term care units, assisted living residences, senior housing and community service providers.

Several of our members are organized as continuing care retirement communities (CCRC) and have been providing valuable services to their communities for many years. Our CCRC members provide a variety of living and service options for those residing in their communities such as housing and property management, transportation, health care, social service, wellness programs and physician services. The number and variety of services provided are unique to each community. A variety of contracts and payment arrangements have been developed to fit the needs and abilities of local markets. The majority of CCRC's in Kansas use more than one fee structure.

Entrance into a CCRC may involve a significant investment or commitment on the part of the consumer. We agree with the intent of the Insurance Departments statutes. In its role to protect consumers, the state of Kansas sets basic parameters for the registration of CCRC's to encourage secure and transparent options for senior living. In studying HB 2148, however, we are unsure how it will enhance the security or transparency of CCRC's in Kansas.

HB 2148 includes new statutory language regarding the initial registration process and the related fees. HB 2148 calls for new rules and regulations regarding the information a CCRC applicant must submit, and requires the Kansas Insurance Commissioner to conduct hearings on new applications. A significant increase in the application fee accompanies the addition of the hearing process, and promulgation of new rules.

K.S.A. 40-2235 currently authorizes the Commissioner to conduct a hearing on an application for registration or continuation if it suspects an applicant is not in compliance with the act. Additionally, we believe the new requirements listed on lines 24-28 of HB 2148, (Sec. 3. K.S.A. 40-2235(c)(1-3)) are currently duplicated in K.S.A. 40-2232, which outlines the content of initial and annual disclosure statements provided to current and potential clients, and the Kansas Insurance Commissioner.

785.233.7443

kahsainfo@kahsa.org

fax 785.233.9471

HOUSE AGING & LTC  
DATE: 2/15/11  
ATTACHMENT #2



HB 2148 places additional requirements on entrance fee arrangements CCRC's may use in servicing their communities. In studying this bill with our membership, we were unable to determine what effects the new entrance fee requirements would have on CCRC's across Kansas. As many of our members have been forced to alter or adopt new fee arrangements in this down economy, we ask for caution in pursuing new requirements that could limit the payment options our members can provide to their communities.


Continuing care retirement communities offer valuable services that can enhance the quality of senior living. We would be happy to assist the members of the committee in contacting some of our CCRC members for more information on their history and the services they provide. We would be pleased to participate in further discussion.

Thank you for your time. I would be pleased to answer questions.

785.233.7443  
kahsainfo@kahsa.org

fax 785.233.9471  
217 SE 8th Avenue  
Topeka, KS 66603-3906

[kahsa.org](http://kahsa.org)



**Kansas Advocates  
for  
Better Care**

# *Making Elder Care Better for 35 Years*

Founded in 1975 as *Kansans for Improvement of Nursing Homes* by concerned citizens like you.

February 15, 2011

**President**

Margaret Farley, BSN, JD  
*Lawrence, Attorney*

**Vice-President**

Jeanne Reeder, LMSW MRE  
*Overland Park  
Heart of America Alzheimer's Assn.*

**Treasurer**

Evie Curtis, Overland Park  
*Senior Vice-President/Trust Officer*

**Secretary**

Molly M. Wood, JD, Lawrence  
*Elder Law Attorney*

**At-Large**

Artie Shaw, Ph.D., Lawrence  
*Clinical Psychologist*

Earl Nehring, Ph.D., Lawrence  
*Retired Professor of Political Science*

**Past President**

Barbara Braa, Eudora  
*Vice-President/Trust & Investment Officer*

Jim Beckwith, MA, MS, Hoyt  
*NEK-AAA Ex. Dir. Emeritus*

Linda Carlsen, Overland Park  
*Community Volunteer*

Janet Dunn, Lawrence  
*Retired Military*

Marlene Finney, LMSW, Topeka  
*Retired Social Services Administrator*

Annette Graham, LSCSW, Wichita  
*Executive Director,  
Central Plains Area Agency on Aging*

Jean Krahn, Manhattan  
*Exec. Director, Kansas Guardianship Program*

Elaine Lynch, Salina  
*Retired teacher & Kansas Legislator*

Rebecca J. Wempe, JD, CPA, Tecumseh  
*Attorney*

**Honorary Board Member**  
William Dann, Lawrence

**Executive Director**  
Mitzi E. McFatrach

Chairman. Bethell and Members of the Aging and Long-Term Care Committee,

Since 1975 Kansas Advocates for Better Care (KABC) is a not for profit organization that has given voice to long-term care consumer concerns. Over the past three decades, long-term care options have grown – from nursing homes, to assisted living, to continuing care retirement communities, and now, increasingly toward home and community based care – allowing elders and persons with disabilities to age in the place of their choosing.

Kansas Advocates for Better Care appreciates Representative Tom Sloan's leadership in introducing legislation that would move Kansas in a direction which would better protect the health and safety of persons receiving long-term care at home.

Kansas Advocates for Better Care strongly supports the provisions in HB 2110 and its extension of ombudsman services to persons receiving long-term care but residing outside a licensed facility as well as the provisions providing access to the ombudsman for persons living in Kansas soldiers' and veterans' homes. We believe the bill that you are considering is a positive direction for Kansas to move. It would offer Kansas recipients of long-term care an independent, objective authority, able to intervene on their behalf whether they were in a nursing home or in their own homes. The Ombudsman is uniquely positioned to understand and address the needs of long-term care recipients.

Under the existing oversight structure in nursing homes Kansas Department on Aging investigates complaints of abuse, neglect and exploitation in most but not all nursing facilities. The soldiers' and veterans' homes as well as the nursing homes for mental health are currently outside the state long-term care ombudsman's jurisdiction. The State Long-Term Care Ombudsman advocates on behalf of facility residents at their request. In home settings, SRS Adult Protective Services investigates complaints of abuse, neglect and exploitation. But there is no parallel component (like the ombudsman) for consumer advocacy in the home setting.

State legislatures in twelve other states have recognized the need and passed enabling legislation for long-term care ombudsmen to advocate, mediate and negotiate on behalf of elders and others who receive community based, long-term care services in their homes. Two other states, Georgia and New Mexico, have passed legislation to extend the long-term care ombudsman's authority to serve persons transitioning from nursing homes to the community as part of their Money Follows the Person program. Three states passed legislation mandating community long-term care ombudsman services in the years just prior to the passage of OBRA Nursing Home Reform in 1987.

Establishing an ombudsman for the home-based care program does the following important things. It:

- fills the gap in the existing system to provide the same level of advocacy for persons receiving long-term care whether in their homes or in a nursing home,
- builds public confidence about the safety and health oversight for home-based services,
- provides some level of protection when the inevitable occasionally occurs, and
- provides a safety net for the minimally regulated services of home-based care.

913 Tennessee Suite 2 Lawrence, Ka  
phone: 785.842.3088 fax: 785.749.0029 toll-free: 800.525.1782

HOUSE AGING & LTC  
DATE: 2/15/11  
ATTACHMENT # 3

We do not wish to see the responsibility of the Ombudsman extended beyond the program's ability to provide adequate service to those in licensed care facilities.

Such a move would undermine the efficacy of the Ombudsman's office and in essence remove the health and safety protection currently in place for those in licensed long-term care facilities. The Institute of Medicine has recommended a ratio of one ombudsman to every 2,000 residents of long-term care facilities. In Kansas we are currently short of that recommendation by at least two ombudsmen, more if the veterans' and soldiers' homes and the nursing homes for mental health are included.

We do not want the legislature to create a hollow promise to persons receiving long-term care at home by extending the Ombudsman's mandate to serve without the resources necessary to serve. A few states have taken this approach and left their citizens without access to advocacy and left the ombudsman program without a way to offer the protections it was intended to provide.

Consumers of long-term care are aware of Kansas' current economic plight, which strains the state budget. The economic downturn has also placed persons receiving long-term care in a position to be at greater risk for financial abuse and exploitation. Kansas Advocates for Better Care supports the establishment of an advisory committee for the purpose of making recommendations for how the long-term care ombudsman services might be extended and for what the scope of an ombudsman program serving persons receiving long-term care in the community would be. Kansas Advocates would offer the following in addition to the provisions in the proposed legislation:

1. Direct the Advisory Committee to:
  - identify critical components for home based long-term care advocacy,
  - analyze existing models and funding options,
  - make recommendations for adequate staff to recipient ratio,
  - determine/identify covered population,
  - define the scope of response ability,
  - determine training needs for staff or expertise for new staff,
  - Identify potential geographic areas for pilot project.
2. Report to appropriate legislative committee within twelve months on pilot project for ombudsman to serve long-term care consumers in at-home settings.
  - identify potential geographic sites and populations served,
  - recommend program model,
  - address pilot project staffing needs and projected project costs,

This legislation addresses a critical need for consumers of long-term care. The Members and Board of Kansas Advocates for Better Care urges this Committee to advance HB 2110.

Thank you for the opportunity to express our opinion.

Sincerely,  
Mitzi E. McFatrach  
Executive Director

**AGING AND LONG-TERM CARE COMMITTEE  
FROM THE STATE LONG-TERM CARE OMBUDSMAN**

**Belinda Vierthaler, MSW**

**February 15, 2011**

Representative Bob Bethell, Committee Chair and Members of the Committee, thank you for the opportunity to provide testimony.

The Ombudsman program supports the advisory committee for the in home Ombudsman. At this time, an advisory committee would be a good idea to study what other states have done and to look at a pilot program. We have several people already interested in being members. We have also discussed the committee with Dr. Chapin at the KU School of Social Welfare, Office of Aging and LTC. They are interested in working on a research project with us, once we find some funding.

It is not financially feasible to start an in home Ombudsman program at this time. We would need at least a mirror image of our Long-Term Care Ombudsman program. This would have a fiscal note of at least \$750,000. We also cannot add any additional responsibilities to our Regional LTC Ombudsman.