

February 23, 2004

To: Health and Human Services Committee

From: Kansas Trial Lawyers Association

Re: HB 2867/An act concerning adult care homes; providing for a medical review panel.

Honorable Chairman Morrison and members of the Health and Human Services Committee
The Kansas Trial Lawyers Association strenuously opposes HB 2867. During this legislative session there have been a number of bills introduced with the obvious goal of **protecting the nursing home industry** in this state **from the legal consequences of its often substandard services.** This bill is of the same ilk. To date, only one bill actually goes to the root of the problem and seeks to improve the quality of nursing home care in this state and thus protect nursing home residents. That bill is the laudable proposal by the Kansas Board of Adult Care Home Administrators to strengthen the state standards for licensed administrators.

We know from the national and state insurance and nursing home industry associations that Kansas, as a result of national and international insurance rate-setting, is facing a crisis. Therefore, **we respectfully urge this committee** not to waste time on wild shots and piecemeal approaches, but rather **to recommend a legislative interim study to determine the real causes of the crisis.** Armed with a broad and fact-based analysis from a Kansas perspective, there is no doubt that a comprehensive solution can be crafted to the crisis of insurance coverage and poor nursing home care, tailored to the needs and experience of Kansans.

It has been widely reported that a rise in the number of lawsuits has precipitated this insurance crisis. But it has been actually shown that **the fiscal mismanagement of the insurance industry is at fault for the present crisis.** The other well known fact is that insurance rates are based upon a national experience and not just the Kansas cohort. In a state where stringent caps on non-economic and wrongful death damages have been in place since the late 1980s, **the argument that out-of-control law suits in Kansas are causing the problem is simply a misrepresentation of facts.**

Congressional studies and inquiries on the issue of substandard care in the nursing home industry are many and the problems have been well-documented in recent years and since at least the 1970's. **Our state only requires nursing homes to have 2.0 hours of direct care staff time per person per 24-hour period. Even the industry has acknowledged that this figure is shockingly low.** In fact, most will say they exceed it. The common estimate today is that to meet basic quality of care **at least 3.5 to 4.00 hours per resident per day is required.** It is no wonder preventable injuries and abuse occur in nursing homes.

Do we really want to protect negligent owners of nursing homes, many of which are corporate, out-of-state chain operators? Remember also that **in most cases our tax dollars have paid the corporation to provide** the very same **negligent care.** If we want fiscal responsibility, the Kansas legislature **should be holding our government contractors, the nursing homes, more accountable for poor care,** rather than less so. When a plaintiff is successful, Kansas Medicaid must be directly reimbursed from the settlement or judgment proceeds for injuries caused by the defendant corporation if Medicaid has paid providers to diagnose or treat the injuries. **State dollars can be recouped by these lawsuits.**

If a new panel is established, let us **suggest a panel to review all unexpected deaths and suspicious or unexplained serious injuries of residents in Kansas nursing homes**; let us require systematic coroner reviews of unexpected deaths; let us determine whether the state should initiate legal action against providers to recoup Medicaid monies.

The bias against plaintiffs in this bill is clear; the number of problems in this bill is great, a few of the most blatant problems are outlined below:

1. Parties already have the opportunity to attempt resolution of claims through techniques such as mediation prior to or subsequent to the filing of the lawsuit; thus, private parties, not the government, pay these costs. **This bill would essentially shift the private costs of dispute resolution to the government.**
2. The bill deals with medical care provided in nursing homes by physicians, and as such, is **redundant of medical malpractice laws.**
3. **Section 1(a) of the bill is not accurate nor complete.** If anything, it is a biased, partisan opinion about a national problem facing the insurance and nursing home industries, not caused by and completely disconnected from the Kansas experience of law suits against nursing homes.
4. The bill will not accomplish its alleged goals as stated in Section 2. The bill provides nothing to “identify” the early resolution of meritorious claims. **Neither injured victims’ “best interests” nor those of the state of Kansas are served by this bill.**
5. The composition of the panel is too vague: **what is a “geriatric-trained clinician”**-- a nurse? A doctor? A physical therapist?
6. The bill has a **Loser Pays provision** in section 9. This violates the long-standing principles of American law, forcing litigants to risk paying the opposing party’s attorney fees in order to access the judicial system for resolution of disputes. Most plaintiffs don’t have the economic power to fight corporate insurance money.

Most importantly **the bill seems to be loosely patterned after K.S.A. 60-3501,et seq., without the fair balance of that existing law, and without the protections against runaway costs to the government for these panels.**

Thank you for the opportunity to express our strong opposition to HB 2867. Again, let us stress that protection of the interests and rights of consumers of nursing facility care should, and must, be paramount to the protection of the self-interest of the nursing home industry. KTLA strongly urges you to reject HB 2867.