

## **TESTIMONY CONCERNING H.B. 2306**

**I would like to thank the committee for permitting this written testimony concerning our experiences with the usage of state survey deficiency reports in court proceedings and the inherent unfairness of permitting these findings as evidence.**

### **MEDICALODGES, INC.**

**Medicalodges Inc., is a Long-Term Care Provider located in Coffeyville, Kansas. Medicalodges operates in four midwestern states with the majority of its facilities located in the State of Kansas.**

**Medicalodges has been in existence since 1961 and employs approximately 2400 individuals in 40 locations.**

**Medicalodges is the only 100% employee-owned nursing home operation in the United States.**

### **CONCERNS WITH STATE SURVEY REPORTS**

**I have concerns when the state survey reports, known as the Form 2567's, are introduced into litigation and are relied upon by juries as a showing of "neglect" and/or "abuse."**

**During the past years, the Long-Term Care Profession, has been barraged with litigation concerning the services provided. This litigation threatens the existence of a very valuable service (the Long-Term Care Profession). Truly, none of us want to face the realities of growing old - but, if unbridled litigation continues, we may not have the resources available such as nursing home facilities.**

**H.B. 2306, while not affecting the public's availability of information contained in the 2567 (statement of deficiencies), does limit prejudicial effect upon a potential jury.**

**State surveys are both objective and subjective and the subjective nature of these reports should not be utilized to prove the contentious allegations of plaintiffs.**

**State surveyors, who monitor long-term care facilities, spend only a limited time in any given facility. These visits are usually from 12 to 14 months from the last visitation. Because of limited time, only approximately 20% of the residents'**

medical records are scrutinized and, customarily, the visits only last for a few days.

Findings made in these state surveys may not have fully been investigated and been erroneous. Procedures exist to permit the provider to challenge the findings, but as a matter of expediency and cost, the provider may very well choose not to contest the findings.

### **DEFENSE DETRACTS FROM CARE AND INSURANCE**

#### **VIRTUALLY IMPOSSIBLE TO OBTAIN**

Unfortunately, the plaintiff's bar have used this emotion filled subject to inflame juries to return large verdicts. Threats of lawsuits often cause large settlements as seen in almost every state of the nation causing their legislatures to consider tort reform measures to limit such actions. The defense of these claims often detract from the actual care that should be the focus of every nursing home in the state. Facility personnel are often absent from the facilities for days while depositions are being conducted. Paper production and interrogatories often take months to furnish and care, and the funds for care, are often routed to defense measures.

Plaintiff's lawyers often charge as much as 50% of the recovery plus expenses which often lead to the injured resident or family member receiving a substantially reduced recovery from what actually was received.

Nursing home lawsuits have run rampant in recent years, which has led to the withdrawals from many states of the availability of professional liability insurance. Medicalodge has found it virtually impossible to place its insurance and has been forced to self-insure initially the retention levels and in recent years become totally self-insured.

It is our understanding that more and more members of our profession have gone "bare" in their professional liability insurance. This practice will, if continued, adversely impact on the continued existence of nursing facilities.

### **STATE SURVEYS ARE PEER REVIEW**

State Surveys represent "peer review."

Other professions have received protection from peer review. We ask for that same protection.

Thank you for your consideration.

**MEDICALODGES, INC.**

**Garen Cox  
President and CEO**