

To: Members of the Senate Commerce Committee
FROM: Greg Wright
Kansas Trial Lawyers Association
RE: HB 2658
DATE: Feb. 16, 2004

Chairman Morrison and members of the House Health and Human Services Committee; thank you for the opportunity to appear before you today. I am Greg Wright, a practicing attorney from Overland Park. I am here on behalf of the Kansas Trial Lawyers Association in opposition to HB 2658.

The Kansas Trial Lawyers Association opposes HB 2658. The federal and state nursing home inspection/survey system exists to protect the health, safety and welfare of residents of nursing facilities, and to assure contractor compliance with Medicare and Medicaid regulations. Taxpayers already pay for a large part of nursing home care and for the survey system to assure that the care meets minimum standards.

The survey system was the subject of a Legislative Post Audit Study within the past several years and found to be reasonably adequate. Nursing facilities already have the right to contest cited deficiencies through a federally-authorized informal dispute resolution process and the enforcement appeals process.

It is uncertain and unclear as to how the proposed independent panel will fit into the existing system. According to testimony presented by the Kansas Department of Health and Environment last year, the existing IDR process has resulted in approximately a 10 to 20% or higher success rate for facilities challenging cited deficiencies. The nursing home industry often disputes the validity of the survey system, but a regulated industry is often at odds with its regulatory authority. It is unclear why a new level of "appeal" is needed, unless the primary concern of the program is industry satisfaction.

KTLA is concerned about the fiscal note for this bill; facilities will no doubt be eager to utilize any opportunity to dispute citations. In order to perform adequately the panel would need to review in detail surveyor findings and facility evidence, which will take significant time, and add to costs. The bill makes KDOA fund the panel work. According to KDOA some surveyor positions are presently not filled, in part, due to the state's inability to offer competitive salaries for nurse surveyors. Perhaps the money would be spent better elsewhere.

In addition to the above comments, we have the following concerns about the bill:

Subsection (d) appears to permit the facility to delay correction of a deficiency simply because it is in dispute. This is not safe for residents and it is probably contrary to federal law;

The bill does not preclude nursing facility representatives from serving on this “independent” panel;

Training for the panel members and required minimum qualifications to assure a base of knowledge are absent from the bill;

Much of the survey content is related to nursing care, yet there is no requirement that the panel include a registered nurse;

There is no requirement for a consumer representative to serve on the panel;

Residents do not have an equal opportunity to challenge the surveyor’s failure to cite deficiencies;

Safeguards to protect against frivolous and unfounded requests for review are lacking; and,

The panel is permitted to consider information brought to light after the survey, which will open up entirely new lines of inquiry and may necessitate further survey activity to confirm. .

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. Thank you for the opportunity to express KTLA’s concerns about this bill and respectfully urges you to oppose HB 2658. I would be happy to answer any questions that you may have.