

LAW OFFICES OF
FRIEDEN, HAYNES & FORBES
A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

JOHN C. FRIEDEN P.A.*
RANDALL J. FORBES P.A.
KEVIN M. FOWLER
CLINTON E. PATTY
TERRY A. ILES

555 SOUTH KANSAS AVENUE, SUITE 303
P. O. BOX 639
TOPEKA, KANSAS 66601-0639

TELEPHONE: (785) 232-7266
FAX: (785) 232-5841
EMAIL: fowler@fhflawfirm.com

Of Counsel:
WILLIAM G. HAYNES*

*ADMITTED IN KANSAS & MISSOURI

ALL OTHERS ADMITTED IN KANSAS

**Testimony Before the House Committee on Health and Human Services
in Support of House Bill No. 2867
by Kevin M. Fowler of Frieden, Haynes & Forbes
on Behalf of the
Kansas Health Care Association, Inc.**

February 23, 2004

Chair Morrison and members of the Committee, my name is Kevin Fowler. I am a partner in the Topeka law firm of Frieden, Haynes & Forbes and I have been licensed to practice law in Kansas for nearly 22 years. During the past decade, a significant amount of my professional time and attention has been devoted to legal matters affecting the interests of Kansas adult care homes and their residents. I am appearing before the Committee on behalf of the Kansas Health Care Association, Inc., and I am pleased to support House Bill No. 2867.

This bill provides for a medical review panel procedure for any aggrieved person who seeks to formally pursue a personal injury claim against a Kansas adult care home based on any alleged act or omission in the rendition of care or treatment at the facility.

During the 1970s, the Legislature first enacted a Medical Malpractice Screening Panel procedure designed to encourage the nonjudicial resolution of medical malpractice claims against Kansas health care providers. See K.S.A. 65-4901 et seq. (L. 1976, ch. 249). The Legislature subsequently amended this statutory procedure in various respects during 1979, 1986, 1999 and 2001. See, e.g., L. 1979, ch. 206, § 1; L. 1986 ch. 229, §§ 48-50; L. 1999, ch. 57, §§ 63-65; L. 2001, ch. 6, § 2. Since Kansas adult care homes are not defined as “health care providers” under K.S.A. 40-3401, however, the Medical Malpractice Screening

Panel Procedure is not available to encourage the nonjudicial resolution of personal injury claims against long term care facilities in Kansas.

As the Committee may be aware, Kansas adult care homes have recently begun to experience what may be properly characterized as a professional and general liability insurance crisis. The escalating cost of professional and general liability insurance currently causes approximately 20% of all facilities to operate without such insurance. Facilities which are “going bare” face an increased risk of financial ruin and expose their residents to the risk that meritorious personal injury claims will not be redressed. For those long term care facilities still able to afford liability insurance, rates have climbed dramatically in recent years. Indeed, some Kansas adult care homes have seen rate increases of 1000%, from around \$100 a bed to more than \$1,000 a bed. The Kansas Health Care Association reasonably anticipates that this liability insurance crisis will only worsen, thereby further jeopardizing the interests of adult care homes and their clientele, without prompt remedial action.

This bill draws on the Medical Malpractice Screening Panel procedure currently available to doctors and hospitals and recent experience with various alternative dispute resolution techniques to provide for a mandatory Medical Review Panel (MRP) as a condition precedent to legal action in order to encourage the nonjudicial resolution of both meritorious and non-meritorious personal injury claims against Kansas adult care home providers.

This bill does not preclude a claimant from taking action against a provider. It simply requires that before a case can be commenced in court, the claimant’s complaint must be first presented to the MRP and an opinion rendered.

The Panel would provide an independent, third-party assessment of alleged acts or omissions in the provision of care and treatment to determine whether an adult care home breached any duty to the resident, whether any breach of duty caused personal injury and, if a claim merits compensation, to recommend a monetary amount for settlement. This review procedure would clearly encourage the early and inexpensive disposition of claims without the initiation of formal legal action. Advantages include:

- Early withdrawal or dismissal of claims without merit
- Findings of MRP admissible as evidence in subsequent court action
- Quick and inexpensive for claimants to use
- Relieve overburdened court dockets
- Reduce financial burden on state Medicaid program

By reducing liability insurance premiums, Kansas’ precious, limited Medicaid resources will be better utilized as those dollars go to direct residence care. This is a change that is needed immediately as currently Medicaid dollars only fund about 89% of allowable costs. Another unsettling trend is that for the years 2001 over 2002:

Liability Insurance/Medicaid day increased 45%*
Food /Medicaid day increased 0.9%

We accordingly urge the Committee to give this bill favorable consideration. Your attention to this matter of vital importance to Kansas adult care homes, their residents and clientele is greatly appreciated.

.