

Testimony on HB 2658
to
Health and Human Services
Presented by Secretary Pamela Johnson-Betts
February 17, 2004

Chairperson Morrison and members of the committee, I am pleased to appear before you today to discuss HB 2658. I am opposed to this legislation for reasons that I will explain.

House Bill 2658 would require the Secretary of Aging to appoint a panel of three persons to conduct an independent review of disputes arising from adult care home surveys. Before discussing the details of this proposed legislation, I would like to describe the current administrative review process and the informal dispute resolution process.

Current Administrative Process

When adult care home inspectors conduct a survey, they prepare a final report. This report is commonly referred to as the statement of deficiencies report. Depending on the nature of the deficiencies, the Kansas Department on Aging (KDOA) may impose certain enforcement remedies against the adult care home. Remedies could range from issuing a civil penalty to ordering a ban on new admissions. At the point in which our agency takes action against the adult care home, the facility has the right to file an appeal.

Approximately forty percent of the adult care homes in Kansas are dually certified, meaning they are certified by both Medicare and Medicaid. The appeal rights of each facility are provided through federal administrative appeals procedures and the Kansas Administrative Procedures Act. It is through the administrative appeals process that we ensure all certified and licensed facilities are provided due process of law. The Office of Administrative Hearings in the Kansas Department of Administration conducts all of the KDOA administrative hearings. Federal enforcement actions can be appealed to the US Department of Health and Human Services Departmental Appeals Board.

Current Informal Review Process

The Licensure, Certification and Evaluation Commission (LCE) has used an informal review program since 1991. This process provides an alternative way of resolving disputes arising out of the survey process. The current process involves two steps. The first review is conducted by the regional managers who supervise the survey staff. By working directly with the care home administrators and the survey staff, the regional manager can get an accurate and timely assessment of survey disputes. The regional manager has the authority to make revisions to the survey report should a facility provide additional information demonstrating a cited deficiency should be changed. If the adult care home administrator is not satisfied with regional manager review, the administrator can request a review by LCE management in Topeka,

Proposed External Informal Dispute Resolution Process

The Department on Aging is concerned about HB 2658 in three significant ways.

First, in a letter dated June 12, 2003, CMS advised us that “if any outside entity conducts IDR, the results of the IDR process may serve only as a recommendation to the [Survey Agency] of noncompliance or compliance with the Federal requirements for skilled nursing facilities.” See letter attached.

The current KDOA informal review process has been approved by CMS. It is essential that the legislature be aware the process contemplated by HB 2658 would be subject to CMS review and the results of such an outside process could not be binding on the Secretary of Aging.

Second, we are concerned about the fiscal cost. The current internal process is absorbed into the budget of the agency. We conservatively estimate the cost of an external review process to be \$245,000. We cannot guarantee the costs would not increase because we are uncertain as to utilization by the adult care home industry and we cannot predict the exact cost of retaining the panel of experts. The current KDOA budget cannot accommodate the external review process unless the agency is appropriated additional funds.

Lastly, as described in federal regulations and as implemented for a number of years, the intent of the IDR process is to be informal. The IDR process is intended to allow providers and the agency to informally review survey findings to provide an opportunity for changes before the formal appeals processes begin.

The Underlying Concern

Adult care homes in Kansas are regulated by the federal and state government. We, in KDOA, are the regulators. Quite naturally, a degree of tension sometimes exists between the regulator and the regulated. Although prior adversarial relationships may have lent themselves to a sense of distrust, I encourage the industry and KDOA staff to build relationships using the current process, which can save the state dollars and objectively offer remedies. We encourage adult care homes to use the process more frequently. We pledge to maintain open dialogue with the industry, not just for the benefit of survey and facility staff, but for the benefit of adult care home residents.

I am concerned about establishing a process that has no binding authority over the office I hold. Such a process could offer false hope to those who seek external resolution of disputes. I am committed to our current process and am open to suggestions for its continued improvement.

Thank you for the opportunity to appear before this Committee. I will gladly answer any questions.