

February 18, 2004  
Before House Health & Human Services Committee  
Re: HB 2306

Good Morning Mr. Chairman, and members of the committee.

My name is Tom Murry, from El Dorado Kansas. I'm here today representing ICI Insurance Center, Inc., of El Dorado, and the many long term care facilities we insure and work with throughout the State of Kansas. We have been providing insurance protection and risk management to these facilities for over 20 years. I am here today to support passage of House Bill 2306.

Approximately three years ago, the nursing home industry was hit with severe rate increases and a very restricted insurance market place. It has worsened each year since. We use to write liability insurance coverage with "traditional", admitted insurance companies like Allied and St. Paul. They have discontinued offering that coverage. The former price for that coverage for a \$1,000,000 limit was approximately \$25 to \$40 per bed. It was written on an occurrence form, with no deductible. Today you will be lucky to buy coverage for \$500 to \$1,200 per bed, with a \$25,000 to \$50,000 deductible, in a program that has an automatic price increase of 100% in 5 years! The price increase is due to the "maturing" of the claims made rates as more and more prior liabilities are covered. We have replaced our local mid-western underwriters with specialty wholesalers in Houston using overseas markets like Lloyd's of London, just to name a few.

The legal industry has targeted nursing homes because they are "easy pickings". Elderly people slip and fall, they choke on food, they require lots of special attention. That's why they're living in these facilities. If you want to make a living suing nursing homes, it's not very difficult. There are multiple opportunities each and every day for someone to make a legal complaint and attempt to get a settlement. In fact, one of our homes just yesterday received a legal request for the medical records of one of its residents. And this is one of the best operated and award winning homes in the state. Lawyers are regularly receiving invitations to attend seminars on how to litigate nursing home claims.

The state surveys have become a real issue in the underwriting and pricing of insurance coverage. The surveys are posted in prominent locations in each facility, and they are a part of the public record. If a claim is brought against a nursing home the complaining attorney will use the state survey in front of the jury to prove negligence, even though none of the survey problems have any direct bearing on the injury or incident that gave rise to the person bringing the claim. Because the state surveys play such an important role in "proving" a home's negligence, the insurers have no choice but to determine which homes they insure and for what premium based on the results of the state surveys. We have some homes that have never had a claim, but they've had a few survey problems that can impact their claims dramatically. We have an example of one in south-central Kansas with no losses, but some survey problems, and they received one offer in excess of \$70,000 for a 60 bed facility or \$1167 per bed. Our offer was for \$50,000 (from Lloyd's) with a \$50,000 deductible or \$833 per bed ....on a home that had never had a claim.

I believe that if the state surveys were not allowed as evidence in lawsuits, long term care facilities would be able to defend themselves against claims of negligence and that pricing and insurance availability would improve. I do not believe that the person bringing the claim would suffer. They would simply have to make their case based on the facts as they relate specifically to them. I urge you to pass HB 2306 out favorably for passage this session. Long term care facilities need immediate relief and this is one of the few measures that offers hope. Thank you.