

MINUTES OF THE HOUSE AGING AND LONG TERM CARE COMMITTEE

The meeting was called to order by Chairman Bob Bethell at 3:30 p.m. on January 29, 2009, in Room 711 of the Docking State Office Building.

All members were present except:

Representative Connie O'Brien- excused

Committee staff present:

Norm Furse, Office of the Revisor of Statutes  
Doug Taylor, Office of the Revisor of Statutes  
Kelly Navinsky-Wenzl, Kansas Legislative Research Department  
Terri Weber, Kansas Legislative Research Department  
Judith Holliday, Committee Assistant

Conferees appearing before the committee:

Don Jordan, Secretary, Kansas Department of Social and Rehabilitation Services  
Tom Laing, Executive Director, InterHab  
Craig Kaberline, Executive Director, Kansas Area Agency on Aging  
Cindy Luxem, CEO/President, Kansas Health Care Assn./Kansas Center for Assisted Living  
Debra Zehr, President, Kansas Association of Homes and Services for the Aging

No written testimony:

Loren Snell, Deputy Attorney General and Director of Medicaid Fraud & Abuse Division  
Warner Harrison, Owner/Administrator, LakePoint of Wichita  
Gilbert Cruz, State Ombudsman

Others attending:

See attached list.

Chairman Bethell called the meeting to order and asked Committee members to provide him with their names, email addresses, and office locations so they can receive information on the fitness challenge between the Social Services Budget Committee and the Aging and Long Term Care Committee. He stated that more pedometers would be coming soon.

Chairman Bethell entertained a motion to approve the minutes of the January 20 and January 22 Committee meetings. Representative Horst moved to approve the minutes, seconded by Representative Myers. The motion carried.

Chairman Bethell asked that due to the number of conferees, each should keep their comments as short as possible to enable the meeting to conclude at an appropriate time.

Don Jordan, Secretary, Kansas Department of Social and Rehabilitation Services (SRS) testified before the Committee on the role of Social and Rehabilitation Services in providing adult protective services. (Attachment 1) SRS is mandated by statute to provide adult protective services for any individual age 18 and older. Protective services include investigating reports on abuse, neglect, or exploitation of individuals; assisting in obtaining appropriate social services; and securing legal and medical services. SRS has a legal mandate to maintain a registry of individuals who have committed abuse to prevent these individuals from being employed in nursing homes or other facilities where they can be in proximity with vulnerable adults.

The duty to protect must be balanced with an adult's right to self-determination. Abuse is sometimes reported, but even when an investigation is started, the adult has the right to refuse services under the National Adult Protective Services guidelines. Last year, Adult Protective Services completed 9, 256 investigations with 2,136 confirmed findings. The allegations investigated involved 4065 adults age 18-59, and 5024 adults over age 60. In 840 of the cases, the facility was identified as the individual's residence, while 8, 416 were for those in their homes, living with families or other arrangements..

SRS has a 1-800 number for people to call if they suspect or are a victim of fiduciary exploitation. Education of individuals, such as bank tellers who may become suspicious of money taken out of a person's account, or credit card companies who notice increased activity on an account, is a goal of the Department to increase

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awareness of the problem and prevent some of the abuse. Secretary Jordan took questions from the Committee regarding the reporting and investigative process of these cases.

A brochure entitled "How do I pay for nursing home care?" has been developed through collaboration of the Department of Social and Rehabilitation Services, the Kansas Department on Aging, the Kansas Health Policy Authority, Kansas Health Care Association, and Kansas Association of Homes and Services for the Aging. It is a tool for families upon entering a nursing facility, and a worksheet to assist the financial departments of nursing facilities. (On file in Room 161-W)

Tom Laing, Executive Director, InterHab, testified on the role of InterHab in developing a partnership in the identification, investigation and remediation of identified instances of abuse, neglect and exploitation (ANE) of persons with disabilities. (Attachment 2) He stated some concerns regarding inconsistent review and screening of complaints; follow-through on ANE complaints in a timely manner; and bias against complainants with developmental disabilities.

Mr. Laing asked the Legislature to review the benefits to the state and community staff by expanding the role of the Long Term Care Ombudsman to include persons served by the developmental disability community network.

Craig Kaberline, Executive Director, Kansas Area Agency on Aging testified before the Committee. (Attachment 3) The Kansas Area Agencies on Aging Association represents eleven Area Agencies on Aging in Kansas that serve all 105 counties and are the single points of entry that coordinate publicly funded community-based services. The services available include information and access services; community services; in-home services; housing; and elder rights, with a range of programs within each category.

The staff of the Area Agencies on Aging often discover situations or are contacted about situations of abuse, neglect and exploitation and are often the people reporting these situations to Adult Protective Services. Mr. Kaberline stated that under the current system persons charged with fiduciary abuse are not likely to be prosecuted. More resources, more staff and federal funding are all needed to improve the work, timeliness and outcomes for older adults that are being abused, neglected and exploited.

Loren Snell, Deputy Attorney General and Director of Medicaid Fraud & Abuse Division, spoke to the group about fraud abuse. (No written testimony) He stated that with the economic crisis and the increasing number of elderly, the incidence of scams is rapidly rising.

Mr. Snell cited some problems in the Abuse and Exploitation unit implemented in 2006: inadequate funding; finger-pointing for lack of results; and the need for better training for better referrals from Adult Protective Services. He estimated that scams surface statewide at one or two per day.

Fiduciary abuse with respect to a Durable Power of Attorney was discussed. The problem with a Durable Power of Attorney is that it is not entered into under false pretenses, so it is not the same as fiduciary abuse. Often a dependent adult won't agree to prosecution. Chairman Bethell suggested that work needs to be done on language for prosecution even if the elderly person doesn't agree.

Discussion ensued regarding providing information about this problem. It was suggested that Legislators use their newsletters to include information about scams or fiduciary abuse, and anyone who suspects a scam should contact the Consumer Protection Division of the Kansas Attorney General's Office and the Better Business Bureau.

Cindy Luxem, CEO/President, Kansas Health Care Assn./Kansas Center for Assisted Living, testified before the Committee on the issue of financial exploitation of the elderly. (Attachment 4) She expressed concern that there is not enough 'teeth' in the Adult Protective Services to be effective, and that her agency is willing to be part of the solution in dealing with family members and others who do not have the resident's best interests in mind.

Warner Harrison, Owner/Administrator, LakePoint of Wichita testified before the Committee as an owner of five nursing homes in Sedgwick and Butler County, and Greensburg. (No written testimony) He stated that

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fraud is rampant in nursing homes and there are no ramifications. He estimated that 5-7% are not paying and the amount is written off by the facility, which ultimately drives up costs for the other residents.

Debra Zehr, President, Kansas Association of Homes and Services for the Aging, testified before the Committee. (Attachment 5) She told the Committee that the system is not effective and its is time for the Legislature and state agencies to work together to fix the problem through statutes and education.

Gilbert Cruz, State Ombudsman, stood to address the Committee. (No written testimony) Mr. Cruz referenced an annual report from the State Ombudsman that shows an increased trend of financial exploitation, which results in loss of assets plus loss of relationship. He directed the Committee to check out the report on the website, [www.kansasombudsmanksgov.com](http://www.kansasombudsmanksgov.com).

Chairman Bethell moved to introduce conceptually a bill on loan forgiveness for physicians, seconded by Representative Schwab. The motion carried.

The meeting was adjourned at 5:00 p.m.

The next meeting is scheduled for February 3, 2009.