

Approved _____

Date

Stephen R. Cloud
3-26-84

MINUTES OF THE HOUSE COMMITTEE ON GOVERNMENTAL ORGANIZATION

The meeting was called to order by Rep. Stephen R. Cloud at _____
Chairperson

9:11 a.m./p.m. on March 21, 1984 in room 522-S of the Capitol.

All members were present except:

Rep. Ediger - Excused
Rep. Louis - Excused

Committee staff present:

Avis Swartzman - Revisor
Russ Mills - Legislative Research Department
Carolyn Rampey - Legislative Research Department
Jackie Breymeyer - Committee Secretary

Conferees appearing before the committee:

Senator Jan Meyers - Bill sponsor
Judy Reno - President, Kansas Association of Home Health Agencies
Barbara Sabol - Secretary, Kansas Department of Health and Environment
Jean Sakumura, Legislative Chairperson, Kansas Association of Home Health Agencies
Sister Judith Sutera - Lobbyist, Kansas Association of Home Health Agencies
Connie Wood - Director, Topeka Hospice, serving on Board of Association of Kansas Hospices
Diane Bottdorff - Kansas State Nurses Association
Gary Petz - Kansas Department of Aging
Marilyn Bradt - Kansans for Improvement of Nursing Homes
Frank Gentry - Kansas Hospital Association
Rick Short - Midwest Association of Medical Equipment Suppliers
Leo Hafner - Legislative Post Audit

The meeting of the House Governmental Organization Committee was called to order at 9:11 a.m. by Rep. Stephen R. Cloud, Chairman. He asked conferees of SB 659 to keep their comments brief, as there were several people present to testify. He called on Senator Jan Meyers, bill sponsor, to begin.

Senator Meyers went over the bill, which provides for licensing of home health agencies. As the population ages, and with the Title 19 waiver that now allows people to stay in their homes for care, there should be some oversight of these people who are so vulnerable when they are in their own homes. There should be no fiscal note on this bill. Amendments will be needed on page 1 regarding the durable medical equipment suppliers, and pages 6 and 7 new section 15, wherever the words, "home health agency" are. In lieu of these words should be the word, "secretary". Senator Meyers distributed a copy of her amendment to new section 15, which adds a new subsection, (c). (See Attachment) I

Judy Reno, President, Kansas Association of Home Health Agencies, spoke in support of SB 659. Sick, homebound people are easily intimidated and need protection. This type of care is beginning to be provided by nursing homes, which could be a problem or a solution. A good nursing home has nothing to fear. Whether or not the federal government is being frauded is a problem. Certain guidelines for medicare/medicaid were brought up and discussed. Ms. Reno distributed copies of her testimony. (See Attachment) II

Barbara Sabol, Secretary, Kansas Department of Health and Environment, made a brief statement in support of SB 659. The agency will administer whatever becomes law.

III Jean Sakumura, Legislative Chairperson, Kansas Association of Home Health Agencies, spoke in support of SB 659. (See Attachment) She stated that there is no local oversight for protection in this area. She cited the example of a corporation in New York buying a home health providership in Kansas, whereby no local authority would be responsible for the services provided. She suggested adding a grandfather clause to the bill for experienced aids.

Sister Judith Sutera, Lobbyist, Kansas Association of Home Health Agencies, declined to testify, stating that the proceeding conferees had done a good job with their presentations.

IV Connie Wood, Director, Topeka Hospice, defined hospice as care of the terminally ill and support for them and their families in their homes. (See Attachment) One of the hospices within the state is a home health agency and, for this reason, the association supports SB 659.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

SAC

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON GOVERNMENTAL ORGANIZATION,
room 522-S, Statehouse, at 9:11 a.m./p.m. on March 21, 1984

V Diane Bottdorff, Kansas State Nurses Association, read the Association's position in support of SB 659. (See Attachment) This bill will serve the increasing needs of the elderly citizens of the state.

Gary Petz, Kansas Department of Aging, stated that SB 659 serves three basic functions. First, it will insure oversight to improve the quality of care for the people involved; second, it will provide a uniform data base on home health services; third, it is a self-supporting concept.

VI Marilyn Bradt, Kansans for Improvement of Nursing Homes, said that her agency is strongly supportive of the idea of alternative care to keep people in their homes instead of going into nursing homes. (See Attachment)

Frank Gentry, Kansas Hospital Association, stated that the association has no problem with the concept of SB 659. He discussed the problem that hospitals might face if dual licensure would be needed. They are already licensed and certified for medicare. In his opinion, they would have to be licensed again.

Secretary Sabol was asked her opinion on hospital licensure. She stated that licensing should apply to all. A different type training would be needed as home health care would differ from hospital care. The Kansas Department of Health and Environment will administer whatever type bill is passed.

Rick Short, Midwest Association of Medical Equipment Suppliers, stated the bill needs clarification as it relates to the medical equipment suppliers in the industry. He sees this industry as being separate and should be excluded from the bill.

Discussion ensued on the fact that several areas need to be looked at in the bill. These areas include the amendments of Senator Meyers, the hospital association input, testimony of the durable equipment suppliers and the definition of experienced aids. The various people involved in these areas will consult with the Revisor for possible amendments to the bill.

The Chairman asked for any other conferees who might be present to testify on SB 659. As there were none, the hearing on SB 659 was concluded.

The Committee turned to the Department of Human Resources: Division of Unemployment Compensation Audit Report.

VII Leo Hafner, Legislative Post Audit, distributed copies of the presentation entitled, "Unemployment Compensation: Reviewing Protested Claims." He explained how a person is disqualified from receiving unemployment benefits and described the base period and conditions under which an employer will not be charged. (See Attachment) As time did not allow for Mr. Hafner to finish the presentation, it will be rescheduled.

The meeting was adjourned at 10:25 a.m.

Proposed Amendment to Senate Bill No. 659 (As Amended by SCW)

By amending New Sec. 15 by adding new subsection (c):

(c) For the purpose of this section, "unlicensed employee of a home health agency" shall not include a speech therapist, corrective therapist or occupational therapist.

Atch. I

Testimony in Support of SB659

by

Judith M. Reno, R.N., C.N.A., President
Kansas Association of Home Health Agencies

3/21/84

I am speaking in support of SB659 as President of Kansas Association of Home Health Agencies (KAHHA). KAHHA is an organization of certified home health agencies that has been established since 1973. Its members total 84 of the 99 certified agencies. Individuals interested in home health are also members.

Home health care is that care provided in the individual's home or place of residence. A physician orders most of the services. Services are provided by registered nurses, aides, occupational therapists, physical therapists and speech therapists. Most usually, the services are paid by Medicare, Medicaid, private insurance companies and by the family or patient.

Home health care has been around as long as there have been homes. It used to be you only went to the hospital to die. I have been involved (for the past 25 years) in providing home health care from an official agency, a local health department. The other agencies that also have been providing care, along with local health departments, were private non-profit organizations, such as Visiting Nurse Associations.

Two significant events have occurred in the past 25 years regarding home health care. Both incidents have related to reimbursement. In 1966, Medicare was established and began providing reimbursement for home health care. To be eligible to be paid by Medicare, the agency had to be certified. This meant the agency had to meet certain minimum requirements established by Medicare. The agency was visited and evaluated to see if it met the standards and if so, was certified. An agency is recertified every 3 years. This new reimbursement (Medicare) caused a little ripple in the health care industry and certainly offered an option to institutionalization.

The second incident was the establishment of DRG's (Diagnosis Related Groups) in October 1983. This, too, was related to reimbursement - reimbursement for hospitals. The sooner a patient can be dismissed, the better the opportunity for the hospital to break even or even make a little. As a result, there has been

Atch. II

an immediate explosion of home health activity. We are now seeing "sicker" patients requiring a greater degree of skill and knowledge. With this demand for home health has come a proliferation of new agencies with a variety of sponsors and organizational structure. Not all of these agencies are seeking the certification which had set a minimum standard. Without certification, there is no means of assuring that quality care is being delivered. This is essential in a time when increased technical skills are needed.

There is no more vulnerable group of Kansans than those served by home health. They are sick, homebound and easily intimidated. Kansas has been a forerunner in protecting the vulnerable - in 1919, the law was established to protect children not in the care of their families - can we do no less for the elderly, the ill, and the infirmed?

At this time, I would like to introduce Jean Sakamura, KAHHA Legislative Chairperson. She has been intimately involved in the development of the proposed legislation.



March 21, 1984

Representative Stephen Cloud
Chairperson, Governmental
Organization Committee

Dear Mr. Cloud:

Thank you for the opportunity to speak in behalf of SB-659. Your questions were pertinent and allowed for clarification and expansion of our testimony.

I had a concern toward the end of the hearing. It deals with the issue of excluding hospitals from licensure. There are two questions: 1) If the hospital is coming outside the normal hospital environment to deliver services why shouldn't they be monitored? and 2) If the hospital is providing the same services as covered by SB-659, why should they be excluded?

Kansas Association of Home Health Agencies represents those agencies that are already certified. We are ready to assume licensure in addition to certification to insure some quality control of home health services to the citizens of Kansas.

I am enclosing copies of this letter. I would appreciate it if they could be distributed to members of the Committee.

Sincerely,

Judith M. Reno
President, Kansas Association
of Home Health Agencies

JMR:rlb
CC

Testimony in Favor of SB 659 presented by:

Jean Sakumura, Legislative Chairperson, Kansas Association of Home Health Agencies

Reasons Kansas needs a home health licensure bill:

- I Medicare law changed July 1, 1981
 - A. No longer required state licensure to allow proprietary agencies to bill to Medicare for home health services.

- II Proliferation of agencies
 - A. Number of home health agencies in Kansas in 1980 63
 - B. Number of same in January 1984 101
 - C. Total new agencies since Medicare change 38
 - D. Number of new agencies in formerly unserved areas 13
 - E. Number of new agencies in previously served areas duplicating services 25
 - F. Start-up of new agencies in unserved areas should be encouraged.

- III Threat to quality of care
 - A. Sheer number of agencies can mean the community is less aware of each agency's performance
 - B. Proprietary agencies provide incentives for corporations with only a profit motive.

- IV Trends nationwide and in Kansas
 - A. Large corporations or "chains" buying up or starting health care providerships
 - B. Kansas is already experiencing some of this in the nursing home industry.
 - C. Home health is considered "wide open" in home health by large corporations.

Atch. III

IV (cont'd)

- D. Under present law, for example, a New York corporation certified for home health by Medicare could provide home health services to Kansas residents with a skeletal office to receive referrals and no local authority responsible for those services. (Similar to the nursing home industry.)

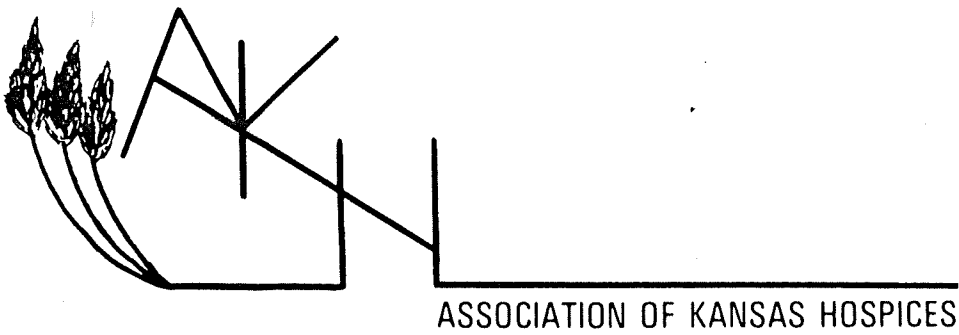
Precedents for state licensure of home health agencies:

- I At present, 34 states have home health licensure laws.
- II Many other states have such laws under consideration.

How this bill meets the need:

- I Not an attempt to restrict competition, controls quality of care.
- II Establishes regulation for quality of care
 - A. Requires the Department of Health & Environment to develop regulations.
 - B. Provides input for one year from home health providers.
- III Imposes no restraint of competition.
- IV Establishes representation on Kansas Health Advisory Committee
 - A. This is timely with the rapid increase of home health services
- V Requires reporting of statistical data by agencies to the state
 - A. Needed for planning purposes.
- VI Establishes licensure fee to cover administrative costs.

2/29/84



HOUSE GOVERNMENTAL ORGANIZATION COMMITTEE

I am Connie Wood, Director of the Topeka Hospice, and I serve on the Association of Kansas Hospice Board of Directors. Most of the Hospice programs throughout the state of Kansas care for the terminally ill and support them and their families in their own homes.

One Hospice within our state is a Home Health Agency, a few of us are a division of a Home Health Agency, and many of the Hospices have contractual arrangements with their local Home Health Agency.

Because of our close relationship with the Home Health agencies of Kansas, the Association of Kansas Hospices support SB 659. We feel that this would assure quality of care for the living and the dying in our state.

5

KSNA

the voice of Nursing in Kansas

Statement of Kansas State Nurses' Association by Mary Canfield, R.N.
before the House Governmental Organizations Committee
March 21, 1984

Supporting SB 659 Licensing of Home Health Agencies

Mr. Chairman and members of the committee, I am Mary Canfield, a Registered Nurse and Director of Topeka-Shawnee County Health Department's Home Health Agency. Our agency was one of the first certified under Medicare regulations.

I am here today to speak in behalf of the Kansas State Nurses Association in support of SB 659, providing for licensure and regulation of home health agencies.

Care needs for the elderly are increasing in demand and with such increased demand comes the greater need to monitor the quality and control the practice of service providers.

We have already seen a proliferation of home health agencies. This type of service is provided to individuals who are, by and large, elderly, often quite ill, sometimes confused and frequently reluctant to criticize or ask questions. All of these factors make recipients of home service particularly vulnerable to exploitation, fraud, and abuse.

Limited funding and cost containment measures create another reason to closely monitor and evaluate home care service provision. With restrictive interpretations of "homebound" and "intermittent care" regulations, Medicare reimbursement for home services may be cut back even further. Cost efficiency and cost savings in home and community services are difficult to measure and are often misunderstood. With reimbursement by visit, a 15 minute home visit may result in lower home care costs than an hour visit, but without the extra time spent in nursing assessment and health teaching, the client may require a costly hospital readmission. It is very difficult to provide quality home care service and make money, but dollar savings and overall health care cost efficiency can be greatly increased by an effective state-wide home care system. It is our belief that this legislation supports this concept.

Atch. V

As nurses, we have a tremendous concern and investment in high quality care and in the attainment of maximal health levels for the citizens of our state. We are also very concerned about the increasing cost of health care, especially institutional care. Home health care offers a viable care option for many persons and nursing is the primary skilled service provided in home care. We feel that if the health of our older citizens is to be best served and institutional costs kept down, alternatives to the existing care options must be developed. The representation by home health agencies on the Advisory Commission on Health as is to be established under this legislation will provide the opportunity for this group of service providers to have input at the state level to identify unmet needs and to recommend alternatives.

To summarize, Kansas State Nurses Association strongly supports SB 659 and believes that this legislation well serves the increasing needs of the ill and elderly citizens of our state.

Thank you for the opportunity to speak to you today.



Kansans for Improvement of Nursing Homes, Inc.

~~XXXXXXXXXXXXXXXXXXXX~~
913 Tennessee Street, #2

LAWRENCE, KANSAS 66044

842-3088 — Area Code 913

March 21, 1984

STATEMENT SUBMITTED TO THE
HOUSE GOVERNMENTAL ORGANIZATION COMMITTEE
CONCERNING SENATE BILL 659

Members of Kansans for Improvement of Nursing Homes have been strongly supportive of alternatives to nursing home care that enable elderly persons to remain in their own homes as long as possible. Along with our support for care alternatives, however, we have consistently asserted that all aspects of that care must be carefully controlled and monitored to be certain that the services provided are of the highest quality, that adequate training of the caregivers is assured, and that case management followup is an integral part of every home care plan.

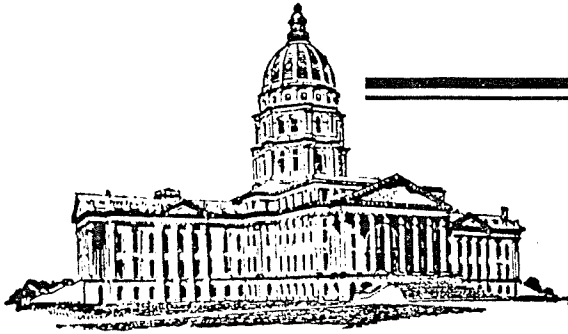
Basic components of alternative care are the programs offered by the home health agencies who provide a wide range of the services necessary to make it all work. KINH believes that it is essential that all home health agencies be licensed and registered by the Secretary of Health and Environment and governed by appropriate rules and regulations promulgated by the Secretary, in order to assure high quality care. It is true that an element of control is exerted by the standards of the Medicare program. A home health agency may opt not to participate in those programs, however, leaving the state with no authority to set standards of monitor agency operations.

It is no less important to regulate the quality of alternative care than it is to regulate care in nursing homes or hospitals. Indeed, because of

Atch. VI

the isolation of the patients in many instances, we must be doubly sure that the caregiver agencies are highly qualified and that their performance may be evaluated. We were very pleased to see that the Senate committee recognized the need for training of home health aides who give direct patient care and have inserted a provision requiring such training.

KINH urges you to give SB 659 your favorable consideration.



**UNEMPLOYMENT COMPENSATION:
REVIEWING PROTESTED CLAIMS**

**A Presentation to the House Governmental
Organization Committee**

March 21, 1984

**Legislative Division of Post Audit
Leo Hafner, Senior Auditor
296-3792**

Atch. VII^a

UNEMPLOYMENT COMPENSATION

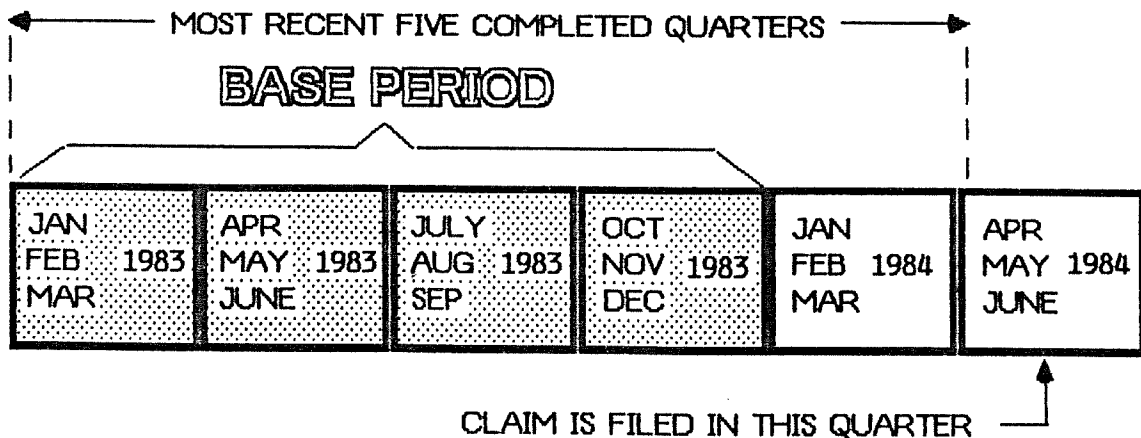
1. **Are unemployment benefits being granted only to those who should qualify?**
 - 100 protested claims were reviewed.
 - 48 of the claimants were disqualified.
 - Some claims decisions appear open to a different ruling, but is it difficult to call any decisions contrary to law.
2. **Are unemployment benefits being accurately charged to the appropriate accounts in accordance with the law?**
 - The auditors question decisions to charge benefits to the general pool of unemployment funds in four out of 14 cases.
 - Some clerical errors were also noted.
3. **Do employers fail to protest unemployment claims?**
 - 200 employers were surveyed.
 - Despite some complaints, employers indicate they do use the system for protesting and appealing unemployment claims.
4. **Are State agencies failing to protest unemployment claims when they should be protested?**
 - Some State agencies have a poor record of protesting claims.
 - Much of the problem appears to result from a lack of understanding about what is needed.
5. **What might be done to improve the system?**
 - The current system for granting unemployment benefits allows a great deal of flexibility and interpretation. If the Legislature thinks the system may be too flexible, several options appear available:
 - a. Passing more definitive legislation
 - b. Requiring the Department to incorporate its guidelines into administrative regulations.
 - Better claim decisions might be made if there were a more active program to educate employers about what information is necessary to make a fair determination on a claim.
 - Benefits granted to former State employees might be better controlled if the Department of Administration were to issue specific instructions about when an agency should protest a claim and what information is needed to document the State's position on the claim.

SECTION A: CONDITIONS DISQUALIFYING A PERSON FOR UNEMPLOYMENT BENEFITS

- 1. LEAVING WORK VOLUNTARILY WITHOUT GOOD CAUSE
 - 2. BEING DISCHARGED FOR A BREACH OF DUTY
- } RESULTS IN AN ELEVEN-WEEK DISQUALIFICATION

- 3. LEAVING WORK VOLUNTARILY FOR DOMESTIC REASONS
 - 4. BEING FIRED FOR GROSS MISCONDUCT
- } TOTALLY DISQUALIFIED DURING CURRENT PERIOD OF UNEMPLOYMENT

SECTION B: DESCRIPTION OF BASE PERIOD



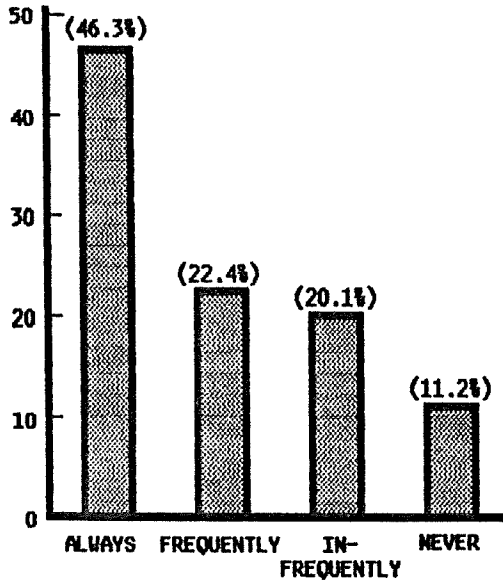
SECTION C: CONDITIONS UNDER WHICH AN EMPLOYER WILL NOT BE CHARGED

- 1. CLAIMANT WAS DISCHARGED FOR A WORK-RELATED BREACH OF DUTY
- 2. CLAIMANT QUIT VOLUNTARILY WITHOUT GOOD CAUSE ATTRIBUTABLE TO THE EMPLOYMENT
- 3. CLAIMANT WAS DISCHARGED FOR GROSS MISCONDUCT CONNECTED WITH THE CLAIMANT'S EMPLOYMENT

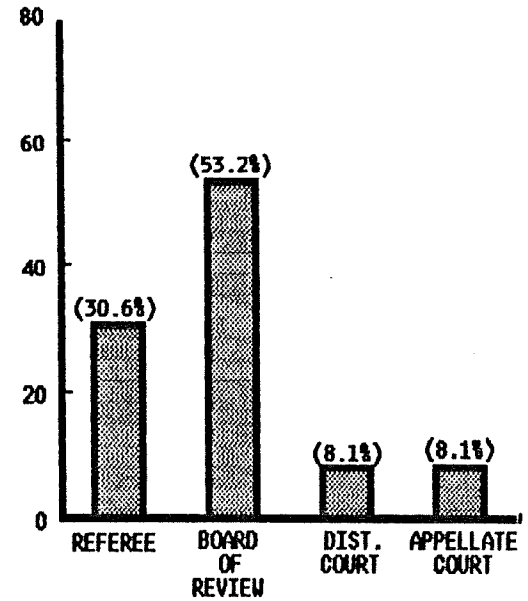
EMPLOYERS INDICATE HOW FREQUENTLY THEY APPEAL DECISIONS THEY CONSIDER TO BE UNFAIR

EMPLOYERS INDICATE THE HIGHEST LEVEL OF APPEAL THEY NORMALLY PURSUE

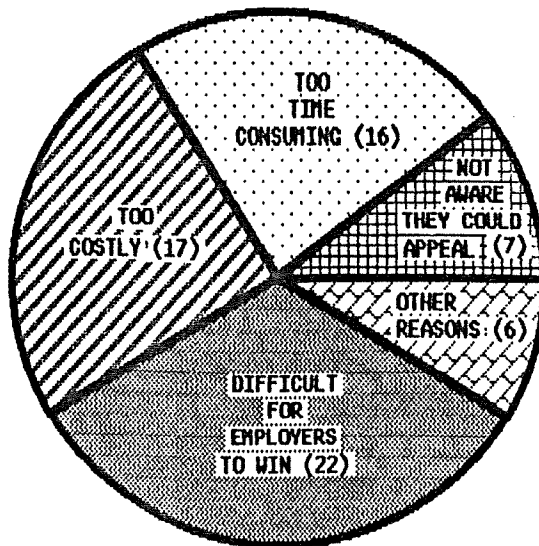
PERCENT



PERCENT



REASONS GIVEN BY EMPLOYERS WHO DO NOT NORMALLY PROTEST OR APPEAL DECISIONS



FILES REVIEWED TO DETERMINE IF UNEMPLOYMENT CLAIMS WERE PROTESTED

<u>AGENCY</u>	<u>Total Claims Filed (Jan. 1 to May 31, 1983)</u>	<u>Total Claims Reviewed by the Auditors (a)</u>	<u>Number of Claim Notices Not Returned</u>
University of Kansas	91	20	2
Department of Social & Rehabilitation Services	59	20	11
Department of Human Resources	42	20	0
Kansas State University	34	19(b)	6
Department of Transpor- tation	21	20	0
Kansas State Penitentiary	20	20	1
Wichita State University	18	18	0
Winfield State Hospital	17	17	15
Larned State Hospital	16	16	0
Osawatomie State Hospital	16	16	0
Department of Revenue	14	14	0
Unified Judicial Depart- ment	12	12	1
Kansas Neurological Insti- tute	10	10	7
Emporia State University	8	8	7
Grain Inspection Depart- ment	8	7(b)	6
Hays State University	7	7	0
Department of Administra- tion	7	7	4
Kansas State Industrial Reformatory	7	7	1
Adjutant General	6	6	1
Pittsburg State University	6	6	5
Topeka State Hospital	6	5(b)	4
Total	<u>425</u>	<u>275</u>	<u>71</u>

- (a) The auditors reviewed all claims filed against an agency up to a maximum of 20 per agency.
- (b) One case file from each of these agencies was out on appeal and was unavailable for review.

AGENCIES VISITED TO DETERMINE IF UNPROTESTED CLAIMS SHOULD HAVE BEEN PROTESTED

<u>Agency</u>	<u>Claims Not Responded to</u>	<u>Claims that Needed a Response</u>
Topeka State Hospital	3	2
Grain Inspection Department	6	0
Adjutant General	1	0
Unified Judicial Department	1	0
Department of Administration	4	4
Department of SRS	11	1
Kansas Neurological Institute	7	5
Total	<u>33</u>	<u>12</u>

Mr. Chairman and Members of the Committee

This audit addressed four main questions

- Are unemployment benefits granted only to those who qualify?
- Are unemployment benefits being accurately charged to the appropriate accounts in accordance with the law?
- Do employers fail to protest unemployment claims because they have found the process to be too costly or too time-consuming?
- Are State agencies failing to protest unemployment claims when they should be protesting them?

From my interview with the Director of the Department of Labor, I learned that...

To answer these questions we selected two separate samples of unemployment claims. The 1st sample consisted of 100 claims which were protested by an employer. The second sample included 275 claims where a State agency was the last employer. We also mailed a survey to 200 employers across the State.

Before going into the results of our testwork, I might explain a couple of basic points about the system for determining who is qualified to receive benefits and who gets charged for those benefits when they are paid.

The first thing I'll talk about is determining if a claimant is qualified for benefits. There are a number of things that can disqualify a person for unemployment. Some of them have to do with whether or not a person is available for work or actively searching for employment. Others have to do with the circumstances that surround the person's termination from his or her

last employment. In order to complete the audit within a reasonable time-period, we concentrated only on the second group of disqualifying factors,-- those resulting from the condition under which the last employment is terminated.

Those disqualifiers are outlined in Section A of page ~~one~~^{two} of your handout.

A claimant can be disqualified if he or she:

- leaves work voluntarily, without good cause
- is discharged for a breach of duty
- leaves work voluntarily for domestic reasons
- is fired for gross misconduct

Under the first two conditions, the claimant is ineligible to receive benefits for eleven weeks and has an amount equal to 10 weeks of benefits deducted from the total benefit entitlement. These claimants will however receive benefits if they remain unemployed longer than the 11-week disqualification period.

Under the last two conditions, the claimants will not receive benefits at all during their current period of unemployment.

We chose to concentrate on these ~~eligibility~~^{disqualification} factors because they closely parallel the circumstances that determine if an employer will or will not be charged for any benefits paid.

To figure out who to charge for benefits, you have to figure out who the claimant's base-period employers are. This concept is illustrated in the center section of ^{Page two of the handout} ~~handout number one~~. The base period is computed on a system of calendar quarters, and is the first four of the last five completed calendar quarters at the time the claim is filed. The base period is the shaded area on your chart. Any employer who employed a claimant during this base period is liable for a share of the benefits paid unless that employer can prove that the claimant

- was discharged for a breach of duty connected with the claimants work
- left work voluntarily without good cause attributable to the employment
- was discharged for gross misconduct connected with the claimant's work.

These conditions are shown in Section C at the bottom of page ~~one~~ ^{two} of your handout.

If the employer proves one of these conditions, his share of ^{any} ~~the~~ benefits is paid by the general pool of unemployment funds, and they are not charged to his specific account.

If you compare those conditions with the ones listed at the top of page
As you can see, the conditions which determine whether or not an employer will be charged for benefits are ^{pretty much} the same as those which disqualify a person for benefits.

The main thing to keep in mind is that only the separation from the most recent employer has anything to do with disqualifying a claimant. In other words, the claimant could have been laid-off by all previous employers, but if he was fired for gross misconduct by the last employer, he would not be qualified for benefits.

On the other hand, the circumstances under which the claimant terminated employment with each individual base-period employer are taken into account in deciding if a specific employer will be charged for benefits. With that much of an overview, I'll summarize what we found during the audit.

To determine if benefits were granted only to those who qualified, and to determine if those benefits were properly charged to a specific employer or to the general pool of unemployment funds, we looked at 100 claims. The claims we chose to look at were either protested by the employer or involved some type of separation issue. This was done as a way of focusing on cases where there might be some question about the decision to grant benefits.

For these cases, we reviewed the decisions the Department had made to determine if they appeared reasonable and in compliance with the law. We also recomputed benefit amounts, and traced the charges for those benefits to the appropriate employer's charge statement. In those cases where the employer should not have been charged for benefits we checked the charge statement to make sure that no charges were made.

Our review revealed that the Department is not indiscriminately granting unemployment benefits to all who apply. In 48 of the 100 cases we reviewed, the claimant was disqualified for a period of eleven weeks and forfeited 10 weeks worth of benefits.

There were disputes over some of the decisions made by the Department's claims examiners. These were taken to some level of appeal.

The appeals process allows an initial appeal to a referee, then to the Employment Security Board of review and finally to the court system.

Twenty-seven of the 100 cases we reviewed were appealed to the referee level, and 10 of those 27 were subsequently taken to the Board of Review.

In our review, we didn't find any cases that were contrary to the law in the determination to grant benefits. It is very difficult to call a determination contrary to law because the law allows a great deal of judgement to be applied to each case.

The most that can be said is that we found several cases that we felt were either inconsistently treated, or that we would have decided differently. These cases tend to be highlighted as profiles in the report. For example, in the box on page ten of the report we have two cases where women left employment to move to another location to get married. In both instances, the circumstances were virtually identical, yet one was disqualified and one was not. The only difference appeared to be that one claimant decided to appeal the determination.

On page 11, there is a case where the claimant initially stated that she was fired. The employers response also indicated that she had been fired for not showing up for work or reporting in anyway for four consecutive days. By the time this case had gone through the appeals process, the referee ruled that she quit voluntarily with good personal cause not attributable to her employment. We disagree with this determination because we believe that it was the employer who took the action to terminate the employment, not the claimant.

In addition to using this case to point out what we consider to be a ^{questionable} ~~peer~~ decision, we also would like to use it to point out an aspect of the law which creates the potential for abuse. In this case the determination that the claimant quit for good personal cause not attributable to her employment does two things.

First, because she was judged to have quit for good cause, the claimant was cleared for benefits.

Second, because that cause was ruled to be not attributable to her employment, the employer was not directly charged for those benefits. As a result, both parties were satisfied and neither had an incentive to appeal the decision even though in our opinion it was questionable. Benefits paid in such cases are spread over all employers and do cause contribution rates to increase.

This case caused us to look closely at all cases in our sample where benefits were granted but the employer was not charged. There were fourteen such cases in the 100 we examined. In our opinion, ten of the fourteen were properly decided. However, the remaining four cases, one of which was the case just mentioned, had questionable decisions. In three of those cases, we were not questioning whether benefits should have been granted, because the claimants appeared to be entitled. Instead, we questioned the decision not to charge the employer because we felt the specific employer should have been charged for the benefits.

In addition to the 100 cases we sampled, we also reviewed a number of other cases that were cited by employers as unfair decisions during testimony

given before legislative committees. For some of these cases, we did not feel that there was a good basis for the employer's complaint. In other cases, we felt that the employers did have a legitimate basis for complaining. However, the subjectivity built into the law, court interpretations of the law, and the lack of first-hand testimony from the parties, would not allow us to state that the Department was wrong in deciding these cases the way that they did.

One thing that may help to provide a basis for better decisions, reduce the number of decisions that are appealed, and possibly reduce some of the controversy over the Department's decisions is to actively educate employers regarding when a response to an unemployment claim notice is necessary, and also what amount and type of information is required to make a fair decision. We noted that often the claim notice is returned with only a three or four word or a one-sentence explanation of why the employe quit or was terminated. This level of documentation provides little in the favor of the employer, when he is up against the claimant's verbal and written testimony supplied to the claims-taker in the unemployment office.

In checking benefit charges to employer accounts we found several errors which appeared to be clerical in nature. In one case a charge was made to an employers' account and not subsequently removed when the referee reversed the claims examiners decision. In two other cases, employers were not directly charged for benefits that they should normally have been charged for.

The second major segment of the audit involved a survey of 200 employers to determine if they were using the procedure for protesting and appealing

unemployment claims, and if not, why not. We received responses from 140 employers or 70 percent of those who received questionnaires.

About 90 percent of those responding said that they always review unemployment claims when they receive them, and that they protest all questionable claims. Ninety-eight percent indicated that they were notified of the Department's decision on their protest.

When asked if they would appeal the decision if they felt it was unfair, just over two-thirds of those responding indicated they would always or frequently appeal. Just over 31 percent said that they would infrequently or never appeal a decision. This information is shown in the chart on the top left portion of page three of the handout. About 84 percent of those who said they would appeal indicated that they would stop with the referee's or Board of Review's decision. Sixteen percent, however, indicated they would appeal it to the courts. This information is represented by the graph in the upper-right portion of the same page. Those who said that they would rarely or never appeal a decision gave several reasons--22 said it was difficult for an employer to win an appeal, 17 said it was too costly, 16 said it was too time consuming, 7 said they were not aware they could appeal, and six gave other reasons such as being discouraged by previous experiences, or trusting the Department's claims examiners to be right in their decisions. This is reflected in the pie-chart at the bottom of page three.

Some employers filled out the survey and also included additional comments. Many of these comments criticized the Department's decisions as,

capricious and arbitrary, too subjective, too inconsistent, or lacking direction. In spite of these protests, most employers surveyed indicated that they do continue to use the process for protesting and appealing unemployment claims.

The third major segment of the audit addressed the question about State agencies failure to protest unemployment claims. Our testwork indicated that some agencies were relatively conscientious about returning claim notices and protesting claims, while others appeared to be lax in this area.

We reviewed 275 unemployment claims for 21 State agencies who experienced more than five claims during the first half of 1983. In each case, we checked the claimant's file at the Department of Human Resources to see if the unemployment claim notice was returned to the Department. We found that about 26 percent of the notices were not returned. This information is shown on page 4 of the handout. As you can see, some agencies returned all claim notices while others returned less than half of the claim notices they received.

It is not necessary for an agency to always return a claim notice to the Department of Human Resources to indicate the reason why an employee quit or was fired. This only needs to be done when the termination of employment would result in the employee being disqualified for unemployment benefits. In order to determine if the unreturned notices should have been returned to protest the claimant's benefits, it was necessary for us to go to specific agencies and review personnel files. We did this for 33 claims against the seven agencies shown at the bottom of page 4 of your handout. As a result of this

review, we found that over one-third of those 33 claims should have been protested, and in seven cases the claimants received a total of \$6,344 in benefits they were not entitled to.

It appears that there is additional potential for finding claims that should have been protested in some of the out-of-town agencies that were unable to visit. Several of those protested less than 20 percent of the claim notices they received.

In talking with the employees at various agencies about the claims we reviewed, two reasons for failure to protest claims surfaced. One was poor communication within an agency, and the other was a lack of understanding about when a claim notice needs to be returned to the Department of Human Resources. We believe that this situation could be improved if the Department of Administration would issue special instructions to all agencies indicating when an unemployment claim notice needs to be returned to the Department of Human Resources and what documentation needs to be supplied with that notice to adequately protect the State's interest.

N.E.K. MULTI-COUNTY BOARD OF HEALTH

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March 21, 1984

Rep. Stephen Cloud, Chairman
Members of Governmental Organization Committee
Kansas House of Representatives
Topeka, KS 66612

I have worked 10 years for a combined health department-home health agency and 10 years prior to this in a rural hospital. The nursing services performed are very different. Nursing has developed into many specialities. For example, nurses experienced in obstetrics or operating room procedures would not be able to function well in a coronary care unit or other specialized service without additional training. Aides working under the supervision of a nurse in the hospital are in a different situation when they perform care in the home without the presence of a nurse to consult with. Nurses and aides working in the hospital cannot go into the home to give care in between caring for hospital patients. It is an entirely separate service recognized by Medicare & Medicaid as requiring a separate certification from hospital or nursing home licensure. Hospitals provide care for acutely ill patients and that is different than home health care.

I attended your committee hearing on SB 659 and urge you not to exclude hospital based home health agencies from licensure under this bill for the reasons I have presented.

Sincerely,



Patricia D. Scott, RN, Administrator

PDS/cs