

Approved January 26, 1984
Date sh

MINUTES OF THE HOUSE COMMITTEE ON PUBLIC HEALTH AND WELFARE

The meeting was called to order by Marvin Littlejohn at
Chairperson

1:30 A.M./p.m. on January 23, 1984 in room 423-S of the Capitol.

All members were present except:

Rep. Walker, excused

Committee staff present:

- Emalene Correll, Research
- Norm Furse, Revisor
- Sue Hill, Secy. to Committee

Conferees appearing before the committee:

Secy. of Department on Aging, Sylvia Hougland
(Attachment No. 1.), for visitor's register.

Chairman called meeting to order, noting housekeeping duties in regard to HB 2094. This bill had been passed out of committee on 1/19/1984, and placed on consent calendar. It has been brought to Chair's attention that a bill with an amendment cannot go on consent calendar, so we need to vote on this bill again. Chair entertained a motion on HB 2094. Motion to pass this bill out of committee favorably was made by Rep. Buehler, seconded by Rep. Branson, question called, and motion carried.

Chair called attention to letter from Administrator of Susan B. Allen Hospital in Eldorado, Kansas, for his views on HB 2648. He was unable to testify in person. Rep. Green had distributed this letter to committee today. (Attachment No. 2.), for details.

Secy. Hougland was introduced to committee. She called attention to the packet of information given to each member. This packet is on file and has information regarding programs of KDOA network, briefing paper, charts on long term care and nutrition budgets, overview of the Aging network.

Secy. Hougland spoke to several programs taking place in KDOA, i.e., working with Dental Society for a discount dental program for low income elderly, working with the Medical Society towards programs on how to talk with your doctor, finding out about costs, etc. Further, about long term care programs, concern with the clientel in nursing homes being older and more disabled than in past years. This poses the question, what do we do about these increasing numbers, and their needs. Also, controlling health care costs. There are increasing demands since the over 85 population has increased over 40% in the last 10 years.

Secy. Hougland passed Ks. Dept. on Aging legislative information, (see Attachment No. 3.), for details. She spoke in detail from this attachment. She then spoke to a resolution that asks for study of benefits to nursing home residents, cost and cost benefits of the availability of licensed nursing home personnel, study of feasibility of 24 hour care in nursing homes. (See Attachment No. 4.) for details. After her comments on this request, Rep. Blumenthal made a motion to request this resolution for the study proposed, motion seconded by Rep. Cribbs. Much discussion followed, i.e., how much high quality care can we afford, who will be on this study board, is anyone else presently into a similar study. Question called by Rep. King, vote taken, division requested, show of hands indicates 10 in favor, so request motion passed.

Further questioning in regard to nutrition costs, meals on wheels sites, etc. Rep. Friedeman asked Secy Hougland to get documentation of cost breakdowns.

Staff then gave a comprehensive review on carry over bills. After review on HB 2529, committee decided to take action on this bill. Rep. Friedeman moved this bill be reported out of committee adversely, motion seconded by Rep. Williams, motion carried.

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.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON PUBLIC HEALTH AND WELFARE,
room 423-S, Statehouse, at 1:30 ~~a.m.~~/p.m. on January 23, 1984.

Staff review on the following bills.--

HB 2091, HB 2098, HB 2100, HB 2101, HB 2103, HB 2105, HB 2143, HB 2149,
HB 2276, HB 2510, HB 2529, HB 2683, HB 2695, HB 2697.

(See Attachment No. 5.), for details in regard to review on HB 2697.

Chair advised committee bill briefing would continue another date.
Chair then asked pleasure of committee in regard to HB 2648 that was
deferred until today's meeting.

Rep. Wagnon recommended we report HB 2648 favorably for passage. Motion
seconded by Rep. Hassler.

Rep. Buehler offered substitute motion to change the date in line 25 of
HB 2648, to read 1985. Rep. Roenbaugh seconded motion.

Much discussion followed, with Rep. Wagnon stating this bill is the most
conservative approach that the Planning Review Commission could make.

Vote taken on substitute motion, chair in doubt, show of hands indicated
9 ayes, 8 no's, chair voting no, making a tie. Substitute motion loses.

Rep. Blumenthal asked for question on original motion, vote taken, division
called, show of hands indicated 9 ayes, chair voting aye, making it 10.
Rep. Friedeman asked for a recount of the vote, counting again indicated
9 ayes, chair voting aye, making it 10, motion passed. Rep. Green asked to
be recorded as voting no on this motion.

Meeting adjourned at 3:02 p.m.

Date: 1-23-84

GUEST REGISTER

HOUSE

PUBLIC HEALTH AND WELFARE

Please Print Name

NAME	ORGANIZATION	ADDRESS
CATHY HOVANCSAK	Ks PHARMACISTS ASSN.	TOPEKA
Mike Hartman	DECA	Shawnee
Dan Kinsella	DECA	MERRIAM
Kevin Fosslund	DECA - Shawnee Mission	Roeland Park
Lynelle King	Ks State Nurses Assn	Topeka
Marilyn Bradt	KINH	Lawrence
Dick Hummel	Ks HEALTH CARE ASSN	TOPEKA
Mary Harper	AAM	Healy, Ks Scott Co.
Merrion Harper	AAM	Wesley, Ks " "
D. Zuber	AP	
Joyanne Reed	Shawnee Mission Schools	S.M. Ks.
Cheryl Murray	" " "	" "
Nancy Orlando	Shawnee Mission School	O.P. KS
Jill Phenicie	Shawnee Mission School	OP, KS
RAELYN CAMPBELL	SHAWNEE, M.S.	SHAWNEE KS.
Kim Young	Shawnee Mission School	Shawnee KS.
Jack Cunniff	Qt #1 Perry KS	A.C.C.H.
HAROLD E. RIEM	KAOM	TOPEKA
Richard D. Keady	KPL / Gas Service Co.	"
Rebecca Kupper	Kan. Hospital Assoc.	"
Al Brandlee	AARP / NRTA	Lawrence, Ks.
Jonna Woodson	NERO	3 Nichita, KS (East High)

Attn. #1.

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NB. 2648
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SUSAN B. ALLEN MEMORIAL HOSPITAL

EL DORADO, KANSAS 67042

January 17, 1984

Kenneth Green
State Representative
State Capital, Room 157-E
Topeka, KS 66612

Dear Kenneth: *Ken*

Thank you for the offer to let me speak to the committee which is considering an extension of the Certificate of Need law with regard to health planning in Kansas. I would very much like to speak with the group, but I am afraid that my schedule won't permit me to do that tomorrow afternoon, January 18. I hope that I will have an opportunity to speak with the group in more detail at a later date.

As you know, Susan B. Allen Memorial Hospital is currently going through the Certificate of Need process so that we might convert existing, but poorly used hospital beds to skilled nursing facility use. We have a fourth floor unit of twenty-five (25) beds which was not fully utilized by hospital patients, and we are therefore applying for approval to permanently change the use of those beds to skilled nursing facility accommodations so that we can meet a need in this community and realize efficient use of existing plant and facilities.

We have been dealing with very courteous employees at all levels of the planning process, but I have to say that we are facing many unnecessary and burdensome paperwork requirements. It would be much simpler if the process of paperwork related to Certificate of Need could be drastically streamlined so that the people who review Certificates of Need could get a closer first-hand look at projects that have been proposed. I support the Kansas Hospital Association plan at present to reduce the paperwork and red tape requirements involved in Certificate of Need, while increasing the exposure of the reviewers to the project being proposed. In other words, I would like to see those who are responsible for approving projects be required to actually come and do a thorough visit of the unit and review all of the information relative to the project while they are actually on sight. In other states and in Kansas I have seen Certificates of Need approved where the actual committee that gave final approval had absolutely no idea of the physical characteristics of the project being proposed. There has been far too much emphasis on paperwork and not nearly enough emphasis on understanding the project, and that is simply my opinion.

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Kenneth Green
State Representative
January 17, 1984
Page 2.

I could go on on this matter and give you many, many examples of what I consider to be inappropriate focus of energy and dollars relative to the paperwork that has been required in Certificate of Need projects. I hope to have an opportunity to discuss this matter further with you at some future date.

Sincerely yours,



Jon P. Boller
Administrator/CEO

JPB:ph

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1-23-4

* Community Long Term Care Resolution

Calling for three state departments - Health & Environment, KDOA, and SRS - to jointly prepare a plan for presentation to the Governor and Legislature. To include need, cost, feasibility, and implementation.

Recommendation of Silver Haired Legislature.

* Non-Institutional Adult Protective Services

Mandating specific protection of non-institutional elderly in Kansas statute. May include increased reporting requirements.

Institutional Abuse/Reporting Penalties

Establishes a penalty for failure of required reporters to report known instances of abuse. Adds nursing home aides to the list of required reporters.

SRS is developing a bill on expansion of mandatory reporters.

* Ombudsman Access to Adult Family Homes

Gives clients and families in Adult Family Homes right to use Nursing Home Ombudsman Program as do those in adult care facilities.

Prospective Hospital Rate Review (S.B. 466)

Sets up a State Commission empowered to set hospital rates applicable to all payors.

Carryover bill.

Passed by Silver Haired Legislature.

* Health Insurance for the Under or Uninsured.

Focuses on older people, single parent family, and divorcees; expands conversion rights; continuation in group at group rates; and notification.

Age Rating of Health Insurance

Prohibits age rating of health insurance in Plan 65.

Citizens Utility Board

Authorizes the establishment of a corporation to represent residential utility consumers.

Telephone Equipment (HB-2595)

Requires sellers of telecommunications equipment to disclose certain information of benefit to customers.

Representative Heinemann

Attn. #3
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Telephone Access Charges (HB-2597)

Establishes conditions under which certain low-income persons receive a subsidy off-setting all access charges.

Representative Heinemann

Telephone Hearing Aid Compatibility

Requires sellers of telephone equipment to provide notice of the hearing aid compatibility of the equipment.

Conservation Rates (HB-2390 and SB-222 - both carryover)

Authorizes, but not requires, the KCC to implement conservation utility rates for residential customers.

Recommended by Silver Haired Legislature and State Advisory Council; KCOA has drafted a resolution for this issue as well.

Telephone Lifeline Rates

This concept would provide subsidized basic telephone service rates to specified groups to insure universal telephone service.

Nothing has been developed.

Homestead Property Tax Relief (HB-2612)

Interim Committee Bill

Expands categories of benefits; keeps upper limits of benefits. KDOA will testify in support of the bill and the need for outreach and publicity.

* 24-Hour Nursing Home Care

Resolution to establish the feasibility of 24-Hour Licensed care.

1/19/84

Proposal #30 - Continuing Care Contracts - Special Committee on Judiciary

Proposal No. 30 directed the Special Committee on Judiciary to study the use of continuing care contracts by the elderly in Kansas and determine whether legislation should be implemented to regulate the use of such contracts.

The Committee concluded that no legislation is needed at this time to regulate the use of continuing care contracts. The Committee cited several reasons for arriving at this conclusion. First, conferees were unable to document any case in Kansas where a continuing care resident lost any portion of the resident's investment in a continuing care arrangement. The Committee believed that it would be premature to impose state regulation on the use of such contracts when in fact there has been no evidence introduced indicating that there are any problems with such arrangements.

Second, the Committee found that the imposition of strict escrow and bonding requirements on those individuals offering life care contracts might generate cash flow problems for a continuing care facility. For these reasons the Committee recommended that no action be taken on H.B. 2251 which would regulate the use of continuing care contracts.

Proposal #39 - Cost and Quality of Nursing Home Care - Special Committee on Special Care Services

Under the heading of Proposal No. 39, the Special Committee on Special Care Services was asked by the Legislative Coordinating Council to study the quality of care provided by adult care homes, including the levels of care, state monitoring of compliance with state and federal standards, and the costs of care. The cost component was to include study of the effect of higher standards of staffing and training, Medicaid reimbursement, and the costs of facilities under various forms of reimbursement.

The Committee received reports of Legislative Division of Post Audit staff work comparing costs and charges of adult care homes in two major classifications (1) in-state and out-of-state operators, and (2) profit and non-profit.

Committee concluded that the preliminary audit of adult care home costs resulted in the identification of a number of issues relating to adult care home operations that should receive further study and consideration by the Kansas Legislature. The audits may also give rise to recommendations for legislative and administrative changes in the laws and regulations that affect adult care homes.

The Committee recommended that the Legislative Division of Post Audit be directed to complete audits of each of the four cost centers - administration, property, room and board, and health care. The Committee further recommended that the results of such audits be reported to the Public Health and Welfare Committees of the House and Senate and to such other committees of the Legislative as the Legislative Post Audit Committee directs.

Proposal #11 - AT&T Divestiture - House Committee on Communication, Computers, and Technology

This Committee was directed to consider the implications of the AT&T divestiture for consumers and the state, including a review of court and regulatory decisions regarding the telecommunications industry and the impact of those decisions on services and rates.

The Committee heard testimony from 6 conferees including KDOA and KCOA. As the FCC decision on interstate access charges was suspended until no later than April, 1984; as federal legislation regarding access charges was pending before the Senate; as the divestiture was not yet an accomplished fact; and as a number of prefiled bills dealt with telecommunication issues, the committee deferred any action or specific recommendations until the 1984 legislative session.

The Committee did express its concern about the impact of higher telephone rates on the low income and fixed income elderly population.

Proposal #20 - Natural Gas Issues - Special Committee on Energy and Natural Resources

This Committee was directed to study all areas of natural gas regulation that affect the state and monitor congressional natural gas price deregulation activities. The committee received briefings by staff of the KCC and the Kansas Geological Survey. In addition, testimony was received from 11 conferees including KDOA.

The Committee made 5 recommendations, 3 of which are of interest to aging advocates. The Committee recommended S.C.R. 1642 which memorializes Congress to immediately and completely decontrol natural gas prices. The Committee also recommended S.C.R. 1643 which directs the KCC to provide infill drilling in natural gas fields (i.e. drilling at closer than the currently allowed distance).

The Committee recommended S.B. 483 which redefines economic waste as applied to the production and conservation of natural gas to include the sale of natural gas below a price which is less than 75% of the previous six months average wellhead price of marketed production as reported by DoE.

Three members of the Committee issues a minority report questioning the ascribed benefits of the decontrol of all categories of natural gas. The minority report proposed that all new gas be decontrolled, that take-or-pay provisions and price escalator clauses in gas purchase contracts be modified and that contract curtailment be allowed.

Proposal No. 2 - Homestead Property Tax Refund Program - Special Committee on Assessment and Taxation

Proposal No. 2 directed the committee to review the program, including the desirability of using a net wealth test, limitations on the participation of full-time students, and possible alternative measures of income.

Concern about homeowners with large assets, yet low income, receiving benefits prompted the study of a net wealth test. Information about the difficulties in administering a net wealth tax and the likelihood that more complicated paperwork might discourage intended beneficiaries from filing influenced the committee to reject the inclusion of a net wealth test for the Kansas program.

In 1979, legislation allowed persons with dependent children under 18 to be eligible for the program. There was concern about whether or not students were intended to benefit from this change. The committee decided not to make any recommendations to change their eligibility.

In addition to studying the net wealth test other aspects of the Homestead Property Tax Refund Program were discussed which particularly affect senior citizens. Since 1981 there has been a decline in the number of claimants. Legislators seem committed to maintaining the viability of the program and looked at ways to ensure that persons who need property tax relief are able to benefit from the program.

The Department of Revenue presented an analysis of the number of claimants from 1971-1983 by income and age. The study also included the total refund amounts for those years. The report included the following:

- The majority of claimants are low income elderly: the median age of claimants in 1982 for total claimants, renters alone and homeowners alone was 74 years of age. The median income was \$6,000, \$5,000 and \$7,000, respectively.
- Increases in the number of claimants per year from 1971-83 generally coincided with increases in program income limits enacted by the legislature.
- Decreases in the numbers of claimants can be attributed to increases in non-taxable income such as Social Security, Railroad Retirement and Veterans Benefits which push those in the upper end of the income ranges above the \$12,900 limit, or those remaining under the household income limit to reduce or eliminate their refund. Added to the latter factor is the consideration that property taxes have not increased comparable to increases in income.

<u>Tax Year</u>	<u>Homestead Claim Process Year</u>	<u>Social Security, Railroad Retirement, and Veterans Benefit % Increase</u>
1980	1981	14.3%
1981	1982	11.2%
1982	1983	7.4%

- Decreases in the number of claimants can also be attributed to cost-of-living salary increases pushing people's income over the income limit. The CPIU for the Kansas City area is used as an indicator for inflation which can be aligned with cost-of-living increases.

<u>Year</u>	<u>CPIU % Increased</u>
1980	10.9%
1981	5.6%
1982	6.3%

Another issue presented to the committee by the Legal Aid Society of Wichita and the Department on Aging concerns the existing law requirement that one-half of the property taxes must be paid by December 20 for eligibility for a refund. This provision creates an undue hardship on those people who are simply too poor to make any sort of property tax payment. To address this issue, the committee recommended the elimination of this requirement and that a refund check be made out jointly to the claimant and to the county treasurer whenever current taxes have not been paid.

1984 LEGISLATIVE PRIORITIES
OF KANSAS AGING ORGANIZATIONS

CATEGORY	ORGANIZATION				
	COALITION ON AGING	K. I. N. H.	SILVER HAired LEGISLATURE	AARP	STATE ADVISORY COUNCIL
<u>HEALTH</u>	<ol style="list-style-type: none"> 1. Improve quality of care in nursing homes. 2. Adequate funding for Medicaid 3. Encourage doctor acceptance of Medicare assignment. 4. Support legislation to collect and disseminate information on hospital and physician charges. 	<ol style="list-style-type: none"> 1. 24-hour coverage by licensed nurses in all intermediate care facilities, on a phased-in basis, with RN's required on the day shift, and LPN's on the 2nd and 3rd shift. 2. Improvements in local health departments nursing home monitoring program administered by H&E. 3. A Nursing Home Cost Study. An interim legislative study proposal of limited scope was adopted; the study is being conducted by Legislative Post Audit at the direction of the Special Committee on Special Care Services. 	<ol style="list-style-type: none"> 1. Non-institutional long term care services available for those who need them on a sliding fee scale charge. 2. Establish a gubernatorially appointed Commission empowered to set hospital charges for all payors. 	<ol style="list-style-type: none"> 1. Medical and health care cost containment. 2. Community Based Alternatives - inform general public and medical community about various opportunities for other kinds of help in living that are available to older people (other than institutional living.) 	<ol style="list-style-type: none"> 1. 24-hour licensed care in nursing homes. 2. Public information on Medicare from KDOA. 3. Letter to congressional delegation re Medicare assignment. 4. Support for Community Based In-Home Services relating to the Continuum of Care (case management, sliding scale, appropriate services, etc.).
<u>ENERGY</u>	<ol style="list-style-type: none"> 1. Adopt conservation utility rates. 2. Increase state funding for weatherization. 3. Assure affordable telephone services. 		<ol style="list-style-type: none"> 1. Establish conservation rates for electricity and natural gas. 2. Institute a lifeline telephone rate for needy residential customers. 	<ol style="list-style-type: none"> 1. Conservation and Life-line rates. 	<ol style="list-style-type: none"> 1. Conservation Rates 2. Increase state funding for weatherization. 3. Affordable phone rates. 4. Consumer Utility Board.
<u>MISCELLANEOUS</u>			<ol style="list-style-type: none"> 1. Return business aircraft and farm machinery to the property tax roles. 2. Increased older citizen representation on State Boards and Commissions. 		

AGING ORGANIZATIONS' SUPPORT ISSUES FOR 1984

1-23-84

KANSAS COALITION ON AGING	K. I. N. H.	A. A. R. P.	
<ol style="list-style-type: none"> 1. Protective services. 2. Community based non-institutional living. 3. Geriatric/Gerontology education. 	<ol style="list-style-type: none"> 1. Performance bond requirement. The bill filed in 1983 will carry over to 1984. 2. Penalties in Abuse Law, for failure of mandated groups to report suspected abuse and neglect in nursing homes. This is a hold-over bill also. 3. Improved training for administrators, including a mandatory internship of 6 months and approved preceptors, to be implemented through regulations. 4. Improvements in the Kansas receivership law. This law needs strengthening and is not adequately financed. 	<ol style="list-style-type: none"> 1. Review of tax structure. 2. Life Development Education. 3. Strengthening adult abuse statutes. 4. Elders on state-level boards and commissions. 	

A CONCURRENT RESOLUTION DIRECTING THE SECRETARIES OF AGING,
HEALTH AND ENVIRONMENT, AND SRS TO STUDY THE BENEFITS AND
COSTS OF LICENSED NURSING PERSONNEL ON ALL SHIFTS IN ICF'S.

WHEREAS, there is a projected increase in the elderly population of the United States from 27 million persons in 1980 to 32 million by the year 2000; and

WHEREAS, Kansas now ranks 8th among the states in percentage of persons 65 years of age or older; and

WHEREAS, the segment of the older population most likely to be dependent and to need institutional care, those 80+, is growing at the fastest rate among Older Kansans; and

WHEREAS, national and state surveys indicate that the nursing home population has become increasingly dependent in recent years and in greater need of heavy care; and

WHEREAS, present state policies pursue the praiseworthy goal of assisting elderly persons whose infirmities are no more than moderately incapacitating to remain in their own homes or in homelike community settings; and

WHEREAS, by the success of these policies it is assured that an increasingly greater percentage of the nursing home population will consist of those persons whose physical and social needs, because of their severity, cannot be met in a home setting; and

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WHEREAS, this older, frailer, more infirm segment of the elderly population residing in nursing homes will require a higher level of professional expertise to monitor and evaluate their medical needs;

BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF KANSAS, THE SENATE CONCURRING THEREIN: That in recognition by the Legislature of the State of Kansas of the need to provide a high quality of care for the residents of adult care homes the Secretary of Aging, with assistance and cooperation of the Secretaries of Health and Environment, and Social and Rehabilitation Services, shall conduct a study assessing the benefits and cost of licensed nursing personnel on all shifts in Intermediate Care Facilities.

BE IT FURTHER RESOLVED: That the analysis include: (1) the benefits in terms of residents' care; (2) potential costs and cost savings to the state and adult care homes; and (3) the availability of nursing personnel.

BE IT FURTHER RESOLVED: That the Secretary of Aging, in cooperation with the Secretary of Health and Environment, and the Secretary of Social and Rehabilitation Services jointly issue a Report of the Findings to the Legislature and the Governor by January 1, 1985.

1/23/84

PARHAM, COMMISSIONER, DEPARTMENT OF
HUMAN RESOURCES OF GEORGIA, ET AL. v.
J. R. ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF GEORGIA

No. 75-1690. Argued December 6, 1977—Reargued October 10, 1978—
Decided June 20, 1979

Appellees, children being treated in a Georgia state mental hospital, instituted in Federal District Court a class action against Georgia mental health officials. Appellees sought a declaratory judgment that Georgia's procedures for voluntary commitment of children under the age of 18 to state mental hospitals violated the Due Process Clause of the Fourteenth Amendment, and requested an injunction against their future enforcement. Under the Georgia statute providing for the voluntary admission of children to state regional hospitals, admission begins with an application for hospitalization signed by a parent or guardian and, upon application, the superintendent of the hospital is authorized to admit temporarily any child for "observation and diagnosis." If after observation the superintendent finds "evidence of mental illness" and that the child is "suitable for treatment" in the hospital, the child may be admitted "for such period and under such conditions as may be authorized by law." Under Georgia's mental health statute, any child who has been hospitalized for more than five days may be discharged at the request of a parent or guardian, and the hospital superintendent, even without a request for discharge, has an affirmative duty to release any child "who has recovered from his mental illness or who has sufficiently improved that the superintendent determines that hospitalization of the patient is no longer desirable." The District Court held that Georgia's statutory scheme was unconstitutional because it failed to protect adequately the appellees' due process rights and that the process due included at least the right after notice to an adversary-type hearing before an impartial tribunal.

Held: The District Court erred in holding unconstitutional the State's procedures for admitting a child for treatment to a state mental hospital, since on the record in this case, Georgia's medical factfinding processes are consistent with constitutional guarantees. Pp. 598-621.

(a) Testing challenged state procedures under a due process claim requires a balancing of (i) the private interest that will be affected by

the official action; (ii) the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and (iii) the state's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. Cf. *Mathews v. Eldridge*, 424 U. S. 319, 335; *Smith v. Organization of Foster Families*, 431 U. S. 816, 848-849. Pp. 599-600.

(b) Notwithstanding a child's liberty interest in not being confined unnecessarily for medical treatment, and assuming that a person has a protectible interest in not being erroneously labeled as mentally ill, parents—who have traditional interests in and responsibility for the upbringing of their child—retain a substantial, if not the dominant, role in the decision, absent a finding of neglect or abuse. However, the child's rights and the nature of the commitment decision are such that parents do not always have absolute discretion to institutionalize a child; they retain plenary authority to seek such care for their children, subject to an independent medical judgment. Cf. *Pierce v. Society of Sisters*, 268 U. S. 510; *Wisconsin v. Yoder*, 406 U. S. 205; *Prince v. Massachusetts*, 321 U. S. 158; *Meyer v. Nebraska*, 262 U. S. 390. *Planned Parenthood of Central Missouri v. Danforth*, 428 U. S. 52, distinguished. Pp. 600-604.

(c) The State has significant interests in confining the use of costly mental health facilities to cases of genuine need, in not imposing unnecessary procedural obstacles that may discourage the mentally ill or their families from seeking needed psychiatric assistance, and in allocating priority to the diagnosis and treatment of patients as soon as they are admitted to a hospital rather than to time-consuming preadmission procedures. Pp. 604-606.

(d) The risk of error inherent in the parental decision to have a child institutionalized for mental health care is sufficiently great that some kind of inquiry should be made by a "neutral factfinder" to determine whether the statutory requirements for admission are satisfied, see *Goldberg v. Kelly*, 397 U. S. 254, 271; *Morrissey v. Brewer*, 408 U. S. 471, 489, and to probe the child's background. The decisionmaker must have the authority to refuse to admit any child who does not satisfy the medical standards for admission. The need for continuing commitment must be reviewed periodically. Pp. 606-607.

(e) Due process does not require that the neutral factfinder be law trained or a judicial or administrative officer; nor is it necessary that the admitting physician conduct a formal or quasi-formal adversary hearing or that the hearing be conducted by someone other than the admitting physician. While the medical decisionmaking process may

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not be error free, nevertheless the independent medical decisionmaking process, which includes a thorough psychiatric investigation followed by additional periodic review of a child's condition will identify children who should not be admitted; risks of error will not be significantly reduced by a more formal, judicial-type hearing. Pp. 607-613.

(f) Georgia's practices, as described in the record, comport with minimum due process requirements. The state statute envisions a careful diagnostic medical inquiry to be conducted by the admitting physician at each regional hospital. Georgia's procedures are not "arbitrary" in the sense that a single physician or other professional has the "unbridled discretion" to commit a child to a regional hospital. While Georgia's general administrative and statutory scheme for the voluntary commitment of children is not unconstitutional, the District Court, on remand, may consider any individual claims that the initial admissions of particular children did not meet due process standards, and may also consider whether the various hospitals' procedures for periodic review of their patients' need for institutional care are sufficient to justify continuing a voluntary commitment. Pp. 613-617.

(g) The differences between the situation where the child is a ward of the State of Georgia and the State requests his admission to a state mental hospital, and the situation where the child's natural parents request his admission, do not justify requiring different procedures at the time of the child's initial admission to the hospital. Pp. 617-620. 412 F. Supp. 112, reversed and remanded.

BURGER, C. J., delivered the opinion of the Court, in which WHITE, BLACKMUN, POWELL, and REHNQUIST, JJ., joined. STEWART, J., filed an opinion concurring in the judgment, *post*, p. 621. BRENNAN, J., filed an opinion concurring in part and dissenting in part, in which MARSHALL and STEVENS, JJ., joined, *post*, p. 625.

R. Douglas Lackey, Assistant Attorney General of Georgia, reargued the cause for appellants. With him on the briefs on the original argument were *Arthur K. Bolton*, Attorney General, *Robert S. Stubbs II*, Executive Assistant Attorney General, *Don A. Langham*, First Assistant Attorney General, *Michael J. Bowers*, Senior Assistant Attorney General, and *Carol Atha Cosgrove*, Assistant Attorney General.

John L. Cromartie, Jr., reargued the cause for appellees.

With him on the brief on the original argument was *Gerald R. Tarutis*.*

MR. CHIEF JUSTICE BURGER delivered the opinion of the Court.

The question presented in this appeal is what process is constitutionally due a minor child whose parents or guardian seek state administered institutional mental health care for the child and specifically whether an adversary proceeding is required prior to or after the commitment.

I

(a) Appellee¹ J. R., a child being treated in a Georgia state mental hospital, was a plaintiff in this class action² based on 42 U. S. C. § 1983, in the District Court for the Middle District of Georgia. Appellants are the State's Commissioner

*Briefs of *amici curiae* urging affirmance were filed by *William B. Spann, Jr.*, *John H. Lashly*, and *Daniel L. Skoler* for the American Bar Assn.; by *Stephen P. Berzon*, *Marian Wright Edelman*, and *Paul R. Friedman* for the American Orthopsychiatric Assn. et al.; by *Joel I. Klein* for the American Psychiatric Assn. et al.; by *Robert L. Walker* for the Child Welfare League of America; by *Stanley C. Van Ness* for the Department of the Public Advocate, Division of Mental Health Advocacy of New Jersey; and by *Robert S. Catz* for the Urban Law Institute.

Solicitor General McCree, *Assistant Attorney General Days*, *Brian K. Landsberg*, and *Mark L. Gross* filed a brief for the United States as *amicus curiae*.

¹ Pending our review, one of the named plaintiffs before the District Court, J. L., died. Although the individual claim of J. L. is moot, we discuss the facts of this claim because, in part, they form the basis for the District Court's holding.

² The class certified by the District Court, without objection by appellants, consisted "of all persons younger than 18 years of age now or hereafter received by any defendant for observation and diagnosis and/or detained for care and treatment at any 'facility' within the State of Georgia pursuant to" Ga. Code § 88-503.1 (1975). Although one witness testified that on any given day there may be 200 children in the class, in December 1975 there were only 140.