

Approved 1-28-85
Date

MINUTES OF THE House COMMITTEE ON Ways and Means

The meeting was called to order by Bill Bunten at
Chairperson

1:30 ~~am~~/p.m. on Thursday, January 24, 1985 in room 514-S of the Capitol.

All members were present except: All members present

Committee staff present: Gloria Timmer - Legislative Research
Laura Howard - Legislative Research
Jim Wilson - Office of the Revisor
Sharon Schwartz - Administrative Assistant
Nadine Young - Committee Secretary

Conferees appearing before the committee:

Dr. Robert Harder, Secretary of SRS

Others present (Attachment I)

Chairman Bunten called the meeting to order at 1:30 p.m. He announced that HB 2032, relating to State Librarian, would not be taken up today, but would be rescheduled for one day next week.

Chairman turned to HR 6010 and HR 6011, relating to consideration of appropriation bill for FY 86. Representative Guldner explained the two resolutions. These were partially brought about at end of session last year when proposals were made to cut the budget by several different amounts, starting with the 2% cut. Since it was "a little late in the game", it was suggested it be taken up during the start of the '85 session. One deals with CPI and the other with a straight freeze. Representative Guldner suggested the two might even be merged to form one bill.

Chairman announced there would be no action taken on the two resolutions today, rather, he appointed a sub-committee headed by Representative Guldner with Representatives Heinemann, Louis, Hamm and Shiriver to serve on the sub-committee and study the matter further. He also suggested that anyone wishing to make any input, either for or against, get in touch with this sub-committee and they would be permitted to voice their views.

Dr. Robert Harder made a presentation relating to the SRS budgets. He presented two different bills for consideration (Attachment II). One relates to special projects workers and represents a major policy decision because it asks for departure. The second bill relates to interpretation of statutory and regulatory provisions. It provides a paragraph in the general welfare law that in those instances where SRS is being sued and there is a question of interpretation, by this particular proposal, legislative intent would be that the courts would construe the law in such a way that it would be the broadest that would be most beneficial to the state agency in conforming to federal rules and regulations. He said that if this proposed new law had been on the books 15 years ago when the nursing home law suit started, it would have been extremely beneficial. He requested that both bills be introduced and referred back to this committee.

Representative Heinemann moved that these two bills be introduced. Seconded by Representative Chronister. At this point, Chairman suggested that Representative Rolf's sub-committee take a look before having the bills printed. Representative Heinemann withdrew his motion. Dr. Harder said he would see that full copies of the two proposed bills be provided to the sub-committee.

Moving on with the presentation, a flip chart was used to illustrate the situation with appropriations and expenditures for the various agencies. The same data was provided to the committee in booklet form entitled "Charts and Tables". (This booklet is not attached hereto, but is on file in the Ways and Means Office, Room 514-S).

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Ways and Means,
room 514-S, Statehouse, at 1:30 ~~xxx~~ p.m. on Thursday, January 24, 1985

A 2-page handout was provided which is a summary of the basic issues relating to the Nursing Home law suit. (Attachment III).

The need to go to 24-hour service in nursing homes was emphasized. It was felt that a full time RN could take care of many medical needs, thereby cutting down on the number of hospital admissions and resulting in a significant savings. Funding would be for the difference in an aide and an RN, not the full position.

Representative Rolfs said he had hear many complaints, mostly pharmacists, regarding timeliness of payments. Dr. Harder said steps have been taken to correct this problem. Also, with the use of computers, claims can be processed much more quickly.

Another significant change is a cut down on number of patient days by going to a pay system with strict limitations.

There was discussion on the job club program which is funded by federal money utilizing GA volunteers. If people do not participate in the program, they become ineligible for job assistance for a 3-month period. It was also stated that to be eligible for the food stamp program, a person must be able to produce evidence of job search.

Representative Chronister asked if there are any figures in that line of the number of people who receive assistance that are not involved in some type of job program. Dr. Harder said he could provide those figures.

There was some discussion on the weatherization program. In the past, the pattern had been to take what was left over, however, this year, that practice is being turned around and we are taking 15% off the top of GA money for this area. SRS is projecting about \$4,000, but it is still considerably under what the projected need actually is.

Dr. Harder said that the area of child abuse and neglect still remains a real problem as it keeps going up and he sees nothing on the horizon to indicate it will level off. The number of reported cases continues to increase, only about 1/3 of those reported cases are we able to confirm.

Also included in the budget is a requested increase of funds for Day Care. Harder said that we are simply not keeping up, right now in the metropolitan area, we are running \$1 to \$2 under the market price and we think it imperative to have an increase in funds.

Representative Chronister asked where we are on Level 6 home care. Harder indicated that SRS has gone to specialized family foster care, and merely paying those foster parents, say twice the amount of money, to care for these children. He said it is almost impossible to recruit facilities to do the specialized jobs and that it's basically a problem of funds.

A copy of "Budget in Brief" was also provided to committee members. A copy of this document is on file in the Ways and Means office, Room 514-S.

Representative Chronister asked if we ever got together a "tracking system" as far as youth centers are concerned. Dr. Harder replied that he would make a notation to check this out and get back with committee on this subject.

Being no further business, Chairman Buntten adjourned the meeting at 3:00 p.m.

The next meeting is scheduled for Friday morning, January 25, at 8:00 a.m.

Date 1-24-85

Name	Address	Representing
Robert R. Whitford	421 So. 18 th Lawrence, Ks.	
Lynelle King	830 Doug, Topeka, 3739 SW Pl	Ks State Nurses Assn
Barbara Remert	Topeka	Planned Parenthood of KS
Ethel May Miller	Topeka	A.R.C.
Paul Johnson	Topeka	PACK
Ric Silber		DOB
Dick Kwerth	Topeka	DOB
Robert R. Shultz	"	DOB
SARA A. Ruge	Lawrence	Legal Aid, Salt Lake
Paul Klotz	Topeka	Assoc. of CMHCs of KS
Norman [unclear]	Topeka	K.D.H.E.

1/24/85

HOUSE WAYS AND MEANS

January 24, 1985

1. AN ACT concerning the unclassified service; relating to special project personnel employed by the state department of social and rehabilitation services; amending K.S.A. 75-2935, 76-12a08 and 76-12a20 and repealing the existing sections.

EXPLANATION: The purpose of this act is to make it possible for those individuals who work for SRS on a project basis to accrue rights and privileges under the personnel system.

2. AN ACT concerning social welfare; relating to interpretation of statutory and regulatory provisions; amending K.S.A. 39-701 and repealing the existing section.

EXPLANATION: This proposed legislation would provide that in those instances when SRS is being sued on a legal point that the interpretation by the court would be the broadest interpretation to insure conformity to existing state and federal laws, rules and regulations and plans.

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1/24/85

II

STATE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES
OFFICE OF THE SECRETARY
January 23, 1985

Re: Seneca Nursing Home, et al. v. Kansas State Board of Social Welfare
Country Club Home, Inc. v. Harder

The Kansas adult care home industry has filed two class action lawsuits against SRS since the inception of the adult care home program: Seneca (Federal District Court) and Country Club (State District Court).

Seneca was a class action lawsuit filed against SRS by the Kansas adult care home industry in 1970 and concerned the following issues: (1) the federal definition of "organized nursing services", (2) the federal policy requiring that a distinct part of a nursing home be designated as an ICF facility, (3) SRS' policy requiring adult care homes to accept SRS' reimbursement as payment in full and not allowing supplementation from the patient or the patient's relatives, (4) SRS' policy concerning utilization review, (5) SRS' policy concerning the suspension of payments, and (6) SRS' reimbursement policies.

The Federal District Court upheld the department on issues 1 through 5 above, but ruled that the department's payment policies between May 12, 1967 and June 30, 1971 were invalid because they did not comply with the provisions of K.S.A. 39-708(x) which required reimbursement based upon reasonable, customary and usual charges (amended effective July 1, 1971 to only require reimbursement based upon reasonable charges subject to federal limitations). A major factor in such decision was that such policies had not been promulgated as administrative regulations pursuant to K.S.A. 77-415 et seq.

However the court in its findings of facts commented that:

"The problems presented here grow out of an effort on the part of a benevolent government to relieve the insecurity imposed on the multitude of our population who, because of old age, infirmities, or poverty cannot adequately provide care for themselves.

"The burden of providing care of a quality required for many who are afflicted with disabling ailments along with all the other categories of assistance has been enhanced by the rapid inflationary development and costs to such an extent that the tax revenues no longer meet the necessities once contemplated by the generous provisions of law and retrenchment is the order of the day.

"The operation of the Social Security Act has become so enormous and so complicated that inconsistencies and conflicting statutes, regulations and directives are bound to exist.

"Court should exercise great restraint in dealing with the extraordinary and unusual situations that have been created because of what appears in some instances to be uncoordinated efforts of different agencies and bureaus of government to provide facilities to carry out the purposes of the Social Security Act.

"That conflicting rules exist must be acknowledged. That they must be harmonized, if possible, seems essential if the program is to succeed within the finances available and the budgetary limitations imposed by reason of legislative appropriations.

1/24/85

III

"It is for these reasons that great latitude must be afforded those agencies which are charged with the responsibility of making the programs workable to the extent funds are made available to them. The legislative intent must be inferred from the appropriations it makes available to carry out what otherwise appears to be mandatory provisions directing payment for services provided by vendors."

Country Club is a class action lawsuit filed against SRS by the Kansas adult care home industry in 1973 and concerns the question of proper reimbursement rates under Title XIX of the Social Security Act. The Kansas Supreme Court has previously held that SRS' reimbursement plan between July 1, 1971 and December 30, 1977 was out of compliance with Title XIX and has remanded the matter back to the District Court for determination as to how much money (if any) is due and owing the plaintiffs.

The Court specifically held that (1) SRS' reimbursement regulations and administrative action thereunder between July 1, 1971 and July 28, 1972 failed to schedule for reimbursement based upon some reasonable cost related method as required by the Social Security Act, (2) SRS' reimbursement regulations between July 29, 1972 and December 30, 1977 potentially reduced payments due to budgetary restrictions in violation of the Social Security Act, and (3) SRS' reimbursement regulations were valid subsequent to December 30, 1977.

It is important to note that (1) the Supreme Court in its decision did not determine that the amounts paid to the adult care homes between July 28, 1972 and December 31, 1977 were improper; the Court only determined that the SRS regulations in effect during such period of time did not insure payment of the proper amounts; and (2) although the plaintiffs had challenged the validity of SRS' regulations on several grounds, the Court found that between July 29, 1972 and December 30, 1977, the only ground for invalidation was that the regulations potentially reduced payments due to budgetary restrictions in violation of the Social Security Act.

The District Court has rendered its initial decisions on remand (4 out of 241) and has decided same against SRS. However the Court appears to have (1) ignored federal guidelines even though SRS' regulations were initially declared invalid because they violated the provisions of the Social Security Act, (2) substituted its judgment for that of the Secretary in relationship to a reimbursement plan even though the Secretary's plan is in conformity with the Social Security Act, and (3) awarded prejudgment interest back to July 1, 1971 even though the plaintiffs until just recently were not able to provide specific figures concerning their monetary damages.

SRS has appealed these 4 adverse decisions to the Supreme Court. Argument is scheduled for early 1983.