

Approved April 2, 1987  
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

The meeting was called to order by Representative Robert S. Wunsch at  
Chairperson

3:30 ~~xxx~~/p.m. on March 30, 1987 in room 313-S of the Capitol.

All members were present except: Representatives Duncan and Peterson, who were excused.

Committee staff present:

Jerry Donaldson, Legislative Research Department  
Mary Ann Torrence, Revisor of Statutes Office  
Mary Jane Holt, Committee Secretary

Conferees appearing before the committee:

Dr. Lorne Phillips, Director, Bureau of Community Health, Kansas Department of Health and Environment  
Chuck Simmons, Legal Counsel, Department of Corrections  
Patrick H. Donahue, Kansas Legal Services, Inc.  
Ron Harper, Acting Director, Department on Aging  
Robert Foster, Kansas Alzheimer's Disease and Related Disorders Association, Wichita  
Richard Nicklan, American Association of Retired Persons, Clearview City  
Irving Peterson, Silver Haired Legislator, Manhattan  
Robert C. Guthrie, Kansas Alzheimer's Disease Task Force of 1985  
Gail J. Hamilton, Kansas National Organization for Women

Hearing on S.B. 268 - Establishing an expiration date on marriage licenses

Dr. Phillips testified S.B. 268 requires the date of birth rather than the age on the marriage license, provides for an expiration date of the license when not used within six months of issuance, and eliminates the requirement for a stub portion on the license form. The act shall take effect January 1, 1989. (See Attachment I).

The hearing was closed on S.B. 268.

Representative Snowbarger moved and Representative Douville seconded to report S.B. 268 favorably for passage, and that it be placed on the consent calendar. The motion passed.

Hearing on S.B. 366 - Classes of felonies and terms of imprisonment

Chuck Simons testified S.B. 366 clarifies the language to make it clear that the minimum sentence for a Class E felony is one year. (See Attachment II)

The hearing was closed on S.B. 366.

Representative Sebelius moved and Representative Fuller seconded to report S.B. 366 favorably for passage. The motion passed.

Hearing on S.B. 264 - Authorizing division of assets between spouses in determining eligibility for medical assistance

Jerry Donaldson, Legislative Research Department reviewed S.B. 264 for the Committee. (See Attachment III). She also distributed copies of a fiscal note on S.B. 264 in which the Department of S.R.S. estimates S.B. 264 will result in additional expenditures of \$2,194,144 in fiscal year 1988, of which \$1,022,471 will be financed from the State General Fund. (See Attachment IV)

Patrick H. Donahue testified that S.B. 264 provides a workable humane relief but will increase the state's medicaid cost. It will probably come under attack by HCFA if it becomes law and if it does, it should be defended. He recommended including provisions in S.B. 264 to direct S.R.S. to assume that the new law is not in conflict with federal law until a final determination is made by the Secretary of H.H.S; take all "available and necessary" steps to obtain a final determination revising an initial

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 JUDICIARY,  
room 313-S, Statehouse, at 3:30 ~~XXX~~ p.m. on March 30, 1987

HCFA determination of conflict; and to "immediately" request that the Attorney General seek judicial review of any adverse final H.H.S. decision and to immediately notify the appropriate fiscal bodies on the legislature. (See Attachment V)

Ron Harper endorsed a division of assets and income. He stated spouses should not be forced into poverty when a catastrophic illness strikes a husband or wife. He stated the Senate added to Sections 2 and 3 a clause which requires federal approval of the law if adopted. The federal government has challenged the division of income laws in California and Washington, but there has never been a challenge of division of assets. (See Attachment VI)

Robert Foster proposed a \$50,000 cap in S.B. 264 and recommended the elimination from the bill of the fourth class claim and Federal Health Care Financing Administration's approval of the law if adopted. (See Attachment VII)

Richard Nicklan testified in support of S.B. 264 and urged the Committee to pass S.B. 264. (See Attachment VIII)

Irving Peterson testified he represented 4,775 senior citizens in seven centers and urged the Committee to pass S.B. 264. (See Attachment IX)

Robert C. Guthrie testified in support of S.B. 264. (See Attachment X)

Gail J. Hamilton testified that current federal and state regulations have been shortsighted in their approach to the serious issue of health care for the elderly. S.B. 264 is a step forward in addressing this issue. (See Attachment XI)

Written testimony was submitted by James V. Behan, Chairman, Kansas A.A.R.P., State Legislative Committee and Wanda Blaser, RN, MSN, President Alzheimer's Disease and Related Disorders Association, Topeka Chapter, supporting S.B. 264. (See Attachment XII) and (Attachment XIII)

The Chairman adjourned the meeting at 5:00 p.m.

The next meeting will be Tuesday, March 31, 1987 at 3:30 p.m. in room 313-S.

GUEST REGISTER

DATE

March 30, 1987  
March 31, 1987

HOUSE JUDICIARY

NAME	ORGANIZATION	ADDRESS
Lynne Peterson	Silver Haired Legislator	Manhattan, Mo.
Charles W. Stover	Topeka Chapter ADRDA	Topeka, KS
Robert C. Guthrie	Topeka, KS Chapter ADRDA	Topeka, KS
Gerald J. Duree	AARP	Top EKA MANS
Jewel Coker	Mature Outlook SB 264	Topeka, Kans.
Evelyn Falk	Mature Outlook SB 264	Topeka, Kans
Evelyn Helberg	Mature Outlook SB 264	Topeka, Kans.
Laverna Falk	Mature Outlook SB 264	Topeka Pension
Elvira Tucker	MATURE OUTLOOK SB 264	TOPEKA, KS
Betty Mitchell	AARP - A.D.	Silver Lake, Ks
Harold C. Pitts	KCOA	Topeka
Marcella Bueary	ADRDA Topeka Chapter	Topeka, KS
John W. Briery	" " " " " "	" "
Vigil Hilderbrand	SHL DIST 3	TOPEKA, KANS.
Charles Simmons	Dept. of Corrections	Topeka, Ks.
Tatie Pyle	Silver-Haired Legislature (SHL)	Topeka, KS
Cedric Moege	Silver Haired Repreislature	Topeka, KS
John Nicklin	ch 3702 AARP Clearview city	Kansas 66019
Edith Schumacher	ch 3702 AARP Clearview city	Clearview city
Urna Watson	Ch 3702 AARP Clearview city	Clearview city
Mrs. Harry Stark	ch 3702 AARP Clearview City, KS	66019
Lam A. Phillips	KJATE	TOPEKA
Marnel Chambers	KASDA SB 264	Wichita
Robert C. Foltz	KASD. S/B 264	"
Alberta E. McCumy	Dept of Aged (SHL)	Topeka



KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT

TESTIMONY ON S.B. 268

PRESENTED TO: House Committee on Judiciary, March 30, 1987

BACKGROUND INFORMATION:

S.B. 268 would amend K.S.A. 23-106 to require the date of birth rather than age on the marriage license and to provide for an expiration date of the license when not used within six months of issuance.

This bill would also amend K.S.A. 23-107. Presently the marriage license is a three-part form. A stub portion to be retained by the clerk of the court. A second part containing only statistical information and the license itself. In addition, a duplicate of the license portion is issued to be retained by the bride and groom. This present format requires the recording of the same items of information sometimes several times. It also causes confusion and record maintenance/storage problems.

STRENGTHS:

Changing the age item to date of birth would greatly eliminate the present confusion as to what age is to be recorded--the age at the time of application, at the time the license is issued or at the time of marriage. Birth date is specific and self explanatory.

It would no longer be necessary to retain unused license records indefinitely. Presently there is no expiration date of marriage licenses. Technically once a license is issued it could conceivably be used at anytime during the lifetime of those individuals which means that the court and the state must maintain marriage license records indefinitely even though the license is not returned within a reasonable amount of time.

To eliminate the requirement for a stub portion would save a great deal of duplication as it would allow us flexibility to develop a form containing a duplicate of the license portion for the bride and groom. This change would also allow us to develop and adopt a form more similar to other states during our upcoming revision process. (Vital records are revised nationally every ten years.)

WEAKNESSES:

None apparent to this Department.

DEPARTMENT'S POSITION:

This bill is basically a clean-up bill. All issues addressed will assist in making the marriage license registration process more efficient and less confusing; therefore, we recommend support.

Presented by: Lorne A. Phillips, Ph.D.  
Director, Bureau of  
Community Health

License No. 174210

D. C. No. \_\_\_\_\_

County \_\_\_\_\_

Date License Issued \_\_\_\_\_ 19\_\_

LICENSE ISSUED TO:

Groom

NAME: \_\_\_\_\_

RESIDENCE: \_\_\_\_\_

BIRTHPLACE: \_\_\_\_\_

NAME: \_\_\_\_\_

RESIDENCE: \_\_\_\_\_

BIRTHPLACE: \_\_\_\_\_

CEREMONY EXPECTED TO BE PERFORMED BY

NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

Name and Title of Court Official

27-L

License No. 174210

D. C. No. \_\_\_\_\_

County \_\_\_\_\_ Date Issued \_\_\_\_\_ 19\_\_

PERSONAL DATA FROM MARRIAGE LICENSE APPLICANTS

Groom

NAME: \_\_\_\_\_

RESIDENCE: \_\_\_\_\_

STATE OF BIRTH: \_\_\_\_\_

DATE OF BIRTH: \_\_\_\_\_

EDUCATION: \_\_\_\_\_

FATHER: \_\_\_\_\_

MOTHER: \_\_\_\_\_

Bride

NAME: \_\_\_\_\_

RESIDENCE: \_\_\_\_\_

STATE OF BIRTH: \_\_\_\_\_

DATE OF BIRTH: \_\_\_\_\_

EDUCATION: \_\_\_\_\_

FATHER: \_\_\_\_\_

MOTHER: \_\_\_\_\_

STATE OF BIRTH: \_\_\_\_\_

This stub to be detached and sent to the State Registrar, along with the completed marriage license, not later than the third of the following month.

License No. 174210

STATE OF KANSAS

THE KANSAS STATE DEPARTMENT OF HEALTH AND ENVIRONMENT

Office of Vital Statistics

Marriage License

D. C. No. \_\_\_\_\_

In the District Court of \_\_\_\_\_ 19\_\_

To Any Person in the State of Kansas Authorized to Perform the Marriage Ceremony, Greetings: YOU ARE HEREBY AUTHORIZED TO JOIN IN MARRIAGE

(Name of Groom) of \_\_\_\_\_ Age \_\_\_\_\_

(Name of Bride) of \_\_\_\_\_ Age \_\_\_\_\_

with the consent of \_\_\_\_\_ (Name of parent or guardian consenting)

and with this license duly endorsed, you will make return to my office at \_\_\_\_\_ Kansas, within ten

days after performing the ceremony.

[SEAL]

Name and Title of Court Official

ENDORSEMENT

Signatures of Witnesses: \_\_\_\_\_

DATE RECEIVED BY DISTRICT COURT \_\_\_\_\_ 19\_\_

DATE RECORDED BY DISTRICT COURT \_\_\_\_\_ 19\_\_

NOTE—After recording, the judge shall forward this original marriage license to the State Registrar, Topeka, Kansas, not later than the third day of following month.

TO WHOM IT MAY CONCERN:

I hereby certify that I, the undersigned, performed the ceremony

joining in marriage the above named couple on the \_\_\_\_\_

day of \_\_\_\_\_, 19\_\_ at \_\_\_\_\_

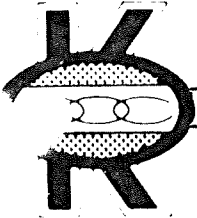
Kansas, in \_\_\_\_\_ County. My credentials

are recorded in the D. C.'s office of \_\_\_\_\_ Co., Ks.

Signed \_\_\_\_\_

Title \_\_\_\_\_

Address \_\_\_\_\_



# KANSAS DEPARTMENT OF CORRECTIONS

MIKE HAYDEN — GOVERNOR

RICHARD A. MILLS — SECRETARY

JAYHAWK TOWERS • 700 JACKSON • TOPEKA, KANSAS • 66603-3798  
913-296-3317

March 30, 1987

TO: HOUSE JUDICIARY COMMITTEE

RE: SENATE BILL 366

The Department of Corrections proposes that K.S.A. 21-4501(e) be amended to strike the words "fixed by the court at not less than" prior to one year with respect to establishing the minimum term for a Class E felony. The Department believes this language is misleading and contrary to the intent of the legislature.

Prior to 1982 the statute provided that the minimum term for a Class E felony "shall be one (1) year". In 1982, the statute was amended to provide for a minimum term of "not less than one year nor more than two years." In 1984, when minimum terms for D and E offenses were "rolled back" to 1982 levels, the two year minimum for E felonies was removed. However, the language about the court setting a term at not less than one year was left in the statute.

Some courts have interpreted this to mean that they can set a minimum for Class E offenses for any period of years up to five. In other words, the minimum sentence is limited only on the minimum end (not less than one year) but is unlimited on the maximum end except by the overall maximum sentence.

We believe the legislature did not intend this result but rather intended to return the minimum sentence for Class E felonies to the pre-1982 term - a one year minimum sentence.

Attachment II  
House Judiciary 3/30/87



MEMORANDUM

March 30, 1987

TO: House Judiciary Committee  
FROM: Kansas Legislative Research Department  
RE: Division of Resources and Income According  
to Senate Bill No. 264

Introduction

S.B. 264 deals with the spousal division of only nonexempt resources and income in determining eligibility for medical assistance. Examples of exempt property include the following:

Real Property Exemptions

- The home, defined as the "tract of land upon which the house or other improvement, essential to the use or enjoyment of the home are located and contiguous real property."

Personal Property Exemptions

Totally exempt personal property items are:

- personal effects
- one vehicle (per family)
- life insurance with a face value less than \$1,500
- burial plots and vaults (normal burial)
- revocable burial funds up to \$1,500
- irrevocable burial trusts
- retroactive social security benefits (for the six months following receipt)

Partially exempt personal property includes:

- the cash proceeds from the sale of home held to purchase a new home exempt for six months
- the equity value of income producing property other than cash if the equity value does not exceed \$6,000 and a net annual return of 6 percent is realized

Income Exemptions

- \$25.00 personal monthly allowance for the sick spouse
- interest
- minimum income amounts, primarily for sheltered workshop employees
- \$341.00 monthly income for the well spouse

I. Division of nonexempt resources under S.B. 264.

A. Nonexempt resources valued at less than \$50,000.

1. Resources of less than \$25,000. Well spouse owns all.

Example: Resources valued at \$21,000. Well spouse would own the entire resource.

2. Resources worth more than \$25,000 but less than \$50,000.

Example: Resources valued at \$35,000.

- a. Well spouse would own resources worth \$25,000.
- b. Sick spouse would own resources worth \$10,000.

B. Nonexempt resources valued at \$50,000 or more.

1. Well spouse would own one-half.

Example: Resources valued at \$80,000.

- a. Well spouse would own resources valued at \$40,000.
- b. Sick spouse would own resources valued at \$40,000.

II. Division of nonexempt income under S.B. 264. Aggregate income of both the sick spouse and the well spouse may be divided into separate equal shares.

- A. All income of the sick spouse would be subject to consideration in determining medical eligibility.
- B. Income of the well spouse would be subject to recovery by Social and Rehabilitation Services to the extent that the well spouse's annual income exceeds \$8,600.

Example:

- a. Well spouses's annual income is \$7,000. The well spouse would be able to keep the entire amount.
- b. Well spouse's annual income is \$10,000. Recovery would be possible for \$1,400, the difference between the exempt amount (\$8,600) and the amount of income (\$10,000).

364	264
Fiscal Note	Bill No.
1987 Session	
March 30, 1987	

The Honorable Roy Ehrlich, Chairperson  
Committee on Public Health and Welfare  
Senate Chamber  
Third Floor, Statehouse

Dear Senator Ehrlich:

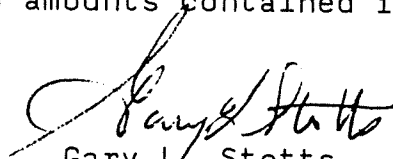
SUBJECT: Fiscal Note for Senate Bill No. 264 by Committee  
on Public Health and Welfare

In accordance with K.S.A. 75-3715a, the following fiscal note concerning Senate Bill No. 264 is respectfully submitted to your committee.

Senate Bill No. 264 is an act relating to the determination of the eligibility for medical assistance provided by the Department of Social and Rehabilitation Services. The bill would allow a qualified applicant or recipient and such person's spouse to divide their aggregate resources and income into separate shares. Only the separate resources or income of the applicant/recipient will then be considered in determining the eligibility for medical assistance. Senate Bill No. 264 takes effect on July 1, 1987.

Senate Bill No. 264 would increase medical assistance program expenditures since the financial support provided by the spouse would be reduced by the amount of exempt resources and/or income. The Department of Social and Rehabilitation Services estimates that Senate Bill No. 264 will result in additional expenditures of \$2,194,144 in FY 1988, of which \$1,022,471 will be financed from the State General Fund. The expenditure estimate is based on 1980 census population figures and assumes that an estimated 450 persons would be affected by the provisions of Senate Bill No. 264.

Any expenditures resulting from the passage of Senate Bill No. 264 would be in addition to amounts contained in the FY 1988 Governor's Budget Report.



Gary L. Stotts  
Acting Director of the Budget

GLS:REK:alh

TESTIMONY OF PATRICK H. DONAHUE  
BEFORE THE HOUSE JUDICIARY COMMITTEE  
ON SB-264 "DIVISION OF ASSETS"  
MARCH 30, 1987

I am appearing here today at the request of this committee. My name is Pat Donahue. I am the Kansas Legal Services, Inc. coordinator of senior citizen law projects. We operate 11 senior citizen law projects across the state under contract with Kansas' 11 area agencies on aging. In 1986 we provided legal assistance to 4,462 seniors. I have personally worked with a number of families with the problems we are discussing here and I have given seminars for the Kansas Bar Association's lawyers across Kansas on Medicaid. This summer I was asked by the Interim Committee to participate in the hearings on the division of assets proposal. I also was asked to give testimony on this proposal to the Senate Public Health and Welfare Committee.

It is my view that there is a hole in the safety net for married couples of moderate means when one spouse needs long-term custodial care. There is now no way to get help until both become poor. The well-to-do are in a position to establish eligibility for medicaid through prior estate plans which use intervivos medicaid qualifying trusts to shelter assets from Medicaid spenddown and later pour these assets forward through the will to the recipient's heirs. The medicaid qualifying trust is permitted under federal medicaid law. The poor are automatically qualified for medicaid. The couples in the low and middle income bracket fall through the net.

In time, insurance may help solve the problem but insurance is not a practical remedy yet. Developing long-term care insurance will take time. The recent national proposals for add-on Part B medicare health insurance for catastrophic illness do not address the problem of long-term, custodial care. The 1986 HHS Report to the President on Catastrophic Illness Expenses (based on 1984 data) showed the greatest share (41.6%) of the out-of-pocket expenditures by the elderly were paid for long-term Nursing Home Care.

MEDICAID IN KANSAS

Before I proceed let me review how medicaid works. Medicaid is a joint federal-state program which arises under Title 18 of the Social Security Act. It is designed to provide health care for the indigent. States operate the program pursuant to

guidelines established by the Health Care Financing Administration (HCFA) of the Department of Health and Human Services. Operating expenses are shared between the federal and state governments according to a financial participation formula which is based on the state's average per capita income. The respective federal and state shares in Kansas are approximately 50% each. Last year (FY'86) SRS reported spending \$235,202,515 or 35.8% of its entire budget on Medicaid. Nursing homes were the biggest expense category at \$101,501,153. This was 42.6% of the total spent on Medicaid. Kansas has about 18,000 nursing home permanent residents . . . , about 11,000 or 61% of these are on Medicaid. About 75% of these persons on Medicaid entered the home as private pay patients. The Legislature Post Audit Study released in July 1986 showed that private pay nursing homes rates in Kansas in 1985 ranged from \$25.37 to \$49.41 per day. S.R.S. projects the fiscal note on SB-264 to increase Medicaid expenses by \$2.2 million. This is an increase of less than 1% on the present \$235.2 million medicaid budget.

#### ✓ PRESENT RULES FOR NURSING HOME MEDICAID ELIGIBILITY

To be eligible for medicaid for nursing home care under the present rules, one must meet the following three conditions.

- ✓ 1. Have a medical need for nursing home placement;
- ✓ 2. Have income insufficient to meet health/nursing home expenses;
- ✓ 3. Have not more than \$1,800 in non-exempt resources (assets).

#### PROPERTY OWNERSHIP PROBLEMS

The present medicaid property ownership rules create eligibility problems. There are basically three rules that are responsible for the problem. These may be summarized as follows:

1. All income and resources in the name of applicant living in a nursing home must be applied to pay nursing home expenses;
2. 100% of the resources owned jointly by husband and wife are considered to be owned by the applicant;

3. Transferring assets valued at less than \$12,000 to another for less than fair value creates an ineligibility penalty for up to two (2) years from the date of the transfer. If the amount is greater than \$12,000 the period is extended up to five (5) years. KAR 30-6-56(e)(2).

These rules can better be understood as by the following examples:

#### INCOME PROBLEM

This is the situation which gave rise to Washington State's division of income law. The statement here is the Washington Supreme Court's recital of the facts.

Irene and Edward Purser received about \$1,740 per month of which \$1,542 was received in checks made payable solely to Edward. In 1978, Edward applied for Medicaid benefits through DSHS. He was found to be eligible. In calculating benefits available to him, however, DSHS considered all income received in his name to be his income. Thus, virtually all of the \$1,542 received in his name had to be used to pay for nursing home cases. Irene was left with an income of \$323 per month. By contrast, if Irene had been the spouse to go to the nursing home, only \$204, the amount received in her name, would have been paid to the nursing home, and Edward would have been left with the \$1,542 he received in his own name. Purser v. Rahm, 702 P.2d 1196(1985) Washington Supreme Court.

#### ASSET PROBLEM

Mr. and Mrs. X acquired \$60,000 and a \$40,000 home during their life. On retirement they sold the home and moved into an apartment. They put \$100,000 in CDs in joint-tenancy with right to survivorship. Mr. X had a stroke and had to be put in a nursing home. Mrs. X will have to spend \$100,000 down to \$1,800 (\$98,200) on Mr. X's care before he can receive Medicaid. If they had each purchased \$50,000 CDs in their own names, Mr. X would have to spend his \$50,000 down to \$1,800 (\$48,200) on his care before he would get assistance and Mrs. X would have her \$50,000 to provide for her own care in her golden years.

## TRANSFER

Under the present rules, Mr. X cannot divide the \$100,000 without causing a transfer - causing up to 5 years of ineligibility.

## SB-264

SB-264 would change the results in each of the eligibility situations I have just outlined. It would do this by permitting the sick spouse to transfer part of his property to the well spouse without causing medicaid disqualification. Under SB-264 the husband and wife could:

- (1) divide their combined assets so that the well spouse has the greater of \$25,000 or 1/2 of the assets of the marriage to live on;
- (2) divide their combined incomes so that the well spouse has a maximum of \$717 to live on. (The present rule permits a transfer to the well spouse that would bring the well spouse's income up to \$341 per month - See KPAM Section 3443(7) Rev. No. 9.)

The object of SB-264 is to prevent the impoverishment of the well spouse. This objective is consistent with the Kansas view that the duty of support between the marriage partners is reciprocal. Lindbloom v. Lindbloom, 177 Kan. 286(1955). The well spouse is just as entitled to support from the sick spouse as the sick spouse is to support from the well spouse. At present, non-support of a spouse is a Class E felony, K.S.A. 21-3605.

## SAFETY MEASURES

SB-264 is not designed to create an estate planning loophole for the wealthy who are seeking ways of circumventing the depletion of their estates by nursing home bills. The bill would operate to permit only controlled transfers and the state would have the right to recapture dollars spent on nursing home care from the residue of the marital estate after the death of the surviving partner. Moreover, the income transferred to the well spouse cannot exceed the level of \$8,600 per year this is 162% of the Official Poverty Threshold. Any income in excess of this amount is to be applied to the cost of care of the sick spouse.

The state is protected here by a subrogation agreement with the applicant and spouse. Then annual amount of \$8,600 isn't much to live on but it is a more reasonable safety net than the present \$4,092.

HOW LONG DO RESOURCES LAST AFTER DIVISION?

Since SB-264 considers dividing resources, it may be helpful to understand how long it would take a person paying his own way to become qualified for Medicaid. I have used the computer to do the problem: Let's assume Mr. X, who is in the home, has divided his resources. After the division he has:

Nursing home bills of	\$1,200 per month
Social Security income of	500 per month
<hr/>	
Shortfall	700 per month

Assume his assets earn 8% interest.

<u>If his assets are</u>	<u>He becomes eligible for medicaid in</u>	<u>months</u>	<u>years</u>
10,000	15		1.25
20,000	31		2.50
30,000	50		4.17
40,000	72		6.00
50,000	97		8.08
75,000	188		15.67
100,000	458		38.17
150,000	never		never

OTHER STATES

Kansas isn't the only state where there has been interest in division of assets measures. The following states have made legislative or administrative rule changes which would increase the amount of resources available for the well spouse to live on: California; Minnesota; Colorado; Illinois; Indiana; New York; and Maryland. HCFA has challenged some of these changes. So far, HCFA has challenged the division of income but not the division of resources. The Washington case of Purser v. Rahm, Supra, is the test case.



## AVOIDED COST

While reviewing the fiscal impact of the proposal, some attention should be given to cost avoidance and social cost. Under the present medicaid eligibility rules, well spouses of medicaid recipients who have incomes less than \$6,700 (125% of poverty) will qualify for:

- Food stamps
- Energy assistance
- Weatherization
- Commodity programs
- Hill-Burton Act medical assistance
- HCBS
- Medically needy medicaid

In this situation, they will fall short of self-sufficiency, be perpetually at risk, and act as a brake on community economic growth.

## IMPLEMENTATION

The present version of SB-264 contains language which makes implementation of the statute conditional on HCFA approval. This conditional approach is quite passive. This committee may wish to consider the California division of resources law implementation feature which direct the State Welfare Department to:

- (1) Assume that the new law is not in conflict with federal law until a final determination is made by the Secretary of HHS.
- (2) Take all "available and necessary" steps to obtain a final determination revising an initial HCFA determination of conflict.
- (3) To "immediately" request that the Attorney General seek judicial review of any adverse final HHS decision and to immediately notify the appropriate fiscal bodies on the legislature.

I think it would be prudent to include such provisions in SB-264 in order to clarify the affirmative role of SRS in gaining HCFA approval for the measure. Otherwise, SRS may feel compelled to promote the agency views of the HCFA bureaucracy.

## CONCLUSION

✓ I believe that the present Medicaid rules do impose a hardship on some seniors. It would be appropriate for Kansas to follow the other states that have attempted to fashion a remedy for the problem. SB-264 provides a workable humane relief but it will increase the state's Medicaid cost and it will probably come under attack by HCFA if it becomes law. If it does it should be defended. SB-264 would help couples for which divorce is presently the only sure remedy. I join the older Kansans who initiated this proposal in believing that the state can and should offer a better alternative.

TESTIMONY ON SENATE BILL 264  
TO  
HOUSE JUDICIARY COMMITTEE  
BY THE  
KANSAS DEPARTMENT ON AGING  
MARCH 30, 1987

Bill Summary:

An Act concerning medical assistance; relating to determination of eligibility; concerning recovery of medical assistance paid.

Bill Brief:

Divides income and assets in half between a husband and wife for the purpose of determining Medicaid eligibility.

Makes income over \$8,600 available for the support of the sick spouse.

Allows a 100% transfer of assets worth \$25,000 or less.

Authorizes the Department of Social and Rehabilitation Services to enforce a lien against the estate of a deceased spouse.

Testimony:

The Kansas Department on Aging endorses a division of assets and income. Spouses ought not to be forced into poverty when a catastrophic illness strikes a husband or wife. A division of assets and income will not prevent impoverishment but the bill will make it less likely that state rules and regulations will force someone to choose between help and dependency, divorce and destitution.

Genesis of the Problem

A recent survey by Louis Harris and Associates found that "most of the 8 million elderly Americans living alone are widows, many of whom are poor and most of whom spend twice as much on medical care as elderly couples."

These people are typically poor because their husbands got sick and needed nursing home care, so they spent all their savings on medical expenses. Once the couple's financial resources were exhausted, Medicaid paid for the remainder but the husband's death then left the widow without any savings.

Men also suffer this fate when their wives are afflicted with catastrophic illnesses. We need to change the Medicaid program so that a husband or wife does not have to be pauperized to provide for a spouse's catastrophic medical expense.

OVER

## Essential Features

A Division of Assets and Income should have three essential features.

1. The Kansas Department on Aging supports legislation which would make home and community based services available to the victims of catastrophic illnesses. It is essential that a "demonstrated need" for home care in addition to receipt of institutional care should make an applicant eligible for a division of assets or income. S.B. 264 does define a qualified applicant as someone who would be eligible for home and community based services if receiving medical assistance (Section 1(f)).
2. The Department also believes that both an income and a resource division are essential. Current regulations allow only a \$341 a month maintenance allowance for the spouse at home. S.B. 264 would allow \$717 per month, which is 1-1/2 times the poverty level and which is the standard for the Low Income Energy Assistance Program.
3. The third essential feature of an appropriate bill is the 50/50 division. It is only fair that spouses be just as well off married as divorced. Most Older Kansans recoil at the idea of divorce, yet that may be their only current alternative. A 50/50 division is consistent with the Kansas Probate Code (K.S.A. 59-602) which allows either spouse to will away half of his or her property.

The Senate added one provision which needs your continuing interest. The Senate added to Sections 2 and 3 a clause which required federal approval of the law if adopted. The Federal government has challenged the division of income laws in California and Washington, but there has never been a challenge of division of assets. I hope that you will follow the progress of the Medicaid plan amendment should S.B. 264 pass.

### Recommended Action:

The Department on Aging urges the 1987 Kansas Legislature to pass S.B. 264. It presents a fair solution to a current situation which is unacceptable.

RLH:LD:mj  
3/30/87

SENATE BILL 264

I want to state that I am in favor of Division of Assets legislation to help the well spouse of a nursing home resident maintain dignity and stay off welfare. I would like to see this bill have a cap of \$50,000. A couple would have to spend their assets down to that figure before they could divide. This would help reduce the overall cost of this legislation.

The well spouse would retain up to \$25,000 plus the home, one car, and any tools used in employment.

With a \$25,000 limit to the estate, a fourth class claim against it most likely would cost more to collect than the amount remaining after the death of both spouses. I would, therefore, like to see the provision for a fourth class claim eliminated from this bill.

The amendment requiring Federal Health Care Financing Administration approval of the change should also be removed. Since we are trying to help the people in Kansas, Kansas legislation should pass without strings attached to the Federal Government.

Robert Foster  
5317 E. Kinkaid  
Wichita, KS 67218  
316-684-2662

Mr. Chairman:

To all members of the Judiciary Committee  
We of the legislative committee of A.A.R.P. Chapter 3702 do  
respectively ask and plead with you to pass S.B. 264 regarding  
the Division of Assets.

Our chapter is made up entirely of the senior citizens of Clearview  
City, which is a retirement community. WE have seen first hand  
of the devastation wrought on couples who thought that they had  
planned well enough in advance to take care of themselves.

But no one can foresee when a catastrophic illness will strike.  
Also very few can arrange the finances necessary to cover such an  
event. It is terribly disheartening to see a couple go from a  
decent way of life that they have worked for all of their life, to  
to almost instant abject poverty trying to care for their partner.

If one partner is allowed to continue in a fairly decent normal  
manner, that partner would be a big help to the hospital or nursing  
home if one partner must be institutionalized.

Which brings us to a subject that everyone is very conscious of,  
The cost of everything.

If one partner is allowed to remain living a reasonably decent life  
that partner will take care of themselves. If they are both driven to  
abject poverty before any aid can be given, then both will have to be  
supported by the state.

So I say to you members of this committee that besides relieving  
a tremendous amount of very painful suffering, it is in the best  
interest of the state also.

Thank you for your patience and understanding  
The legislative committee of A.A.R.P. 3702

Chairman Wunsch and Members of the House Judiciary Committee:

I am Irving Peterson, Silver Haired Legislator from Riley County. I represent 4775 Senior Citizens in seven Centers.

I wish to speak for passage of Senate Bill 264 Division of Assets. Listed among many long term illnesses is Alzheimers Disease. Expenses for this disease of ten to fifteen years duration has in most cases depleted all resources of the husband and wife who had worked a lifetime with plans for a happy retirement.

I know a man in Topeka that has been ill with Alzheimers for ten years. He was a college classmate of mine. Now it is costing \$1300 per month for his care. I know another man in Manhattan, a long time friend, who has had Alzheimers for eight years. I have given time in both these homes with the unwell spouse so the well spouse could attend to needed away from the home activities. I am also acquainted with similar cases in Washington County.

Only if one has had first hand experience can one appreciate how terrible this disease is for the victim, who is equivalent to being lost, doesn't talk, has to be fed, and attempts to remove his clothing any number of times daily. For the well spouse this becomes unbearable, and this spouse, too, may well end up on Medicaid.

At the Federal level Representative Schumer is sponsoring an initiative that would budget for the federal government's share of the Division of Assets. Representative Jim Slattery is a member of the Budget Committee, and Senator Nancy Kassebaum is a member of his committee. This shows awareness of need for Division of Assets to be included in the over all health program.

The Kansas Senate passed SB 264 by a 40-0 vote. I'm therefore hopeful the full House will do likewise.

Thank you,

  
Irving Peterson

HOUSE OF REPRESENTATIVES JUDICIARY COMMITTEE  
REPRESENTATIVE ROBERT S. WUNSCH, CHAIRPERSON  
TESTIMONY OF ROBERT C. GUTHRIE, TOPEKA, KANSAS  
SENATE BILL NO. 264, DIVISION OF ASSETS AND INCOME  
MARCH 30, 1987

Qualifications

My name is Robert C. Guthrie of Topeka, Kansas. I speak in favor of Senate Bill No 264. My brief remarks are made as a member of the Kansas Alzheimer's Disease Task Force of 1985. On February 19, last month, I testified before the Senate Committee on Public Health and Welfare. I am a Charter Board Member of the Alzheimer's Disease and Related Disorders Association, Topeka Chapter which is an affiliate of the National ADRDA. I am a graduate of the University of Kansas with a B.S. Degree in Finance and completed graduate studies at Rutgers University in Trust Administration. I worked for 30 years for the First National Bank of Topeka, now Bank IV Topeka, leading to a senior management position. In 1979 upon reaching normal retirement age, I became a part time consultant for the bank and still am. Over these years, I have shared with many families their joys and sorrows, their financial successes and reversals and have learned the meaning to them of good health vs. illness and financial security vs. hardship.

Personal Experience

This bill rightfully has been expanded to cover many catastrophic illnesses requiring long term care in addition to Alzheimer's disease. My own experience, however, has been to witness the slow, steady, irreversible organic brain disease, diagnosed as Alzheimer's disease, slowly incapacitating my bright, talented wife, Marjorie, who was a leader in many community, charitable, church and civic affairs. Last November, four years after diagnosis, she became a resident of Aldersgate Village Health Care Center because she requires 24 hour a day care. This is my own experience of sorrow and loneliness.

Nevertheless, I face no immediate financial crisis because, although we inherited no wealth, we were successful in building up a comfortable "nest egg" which should have seen us through our golden years. Now I can not be sure for the reason that over the next five years, allowing for more intensive care and a small inflation factor, her expenses could fall between \$140,000 and \$180,000. Over the next 10 years, under the same circumstances, my wife's expenses could range between \$340,000 to \$500,000. And, on a year to year basis, the income is gone on the funds thus expended.

Purpose of Testimony

The purpose of my testimony is not to focus on my own situation, but rather to speak on behalf of some 30,000 Kansans who suffer from Alzheimer's Disease and another estimated 23,000 who suffer from other types of organic dementia. Many of these individuals

Attachment X

House Judiciary 3/30/87



involve married couples who will soon be driven to abject poverty as the system now works. The exemption of the homestead, one car and few other items of personal property helps, but the spend-down requirement to \$1,800 in my opinion is unreasonable. The so called well spouse is left with few assets, little income and usually with a profound loss of self-esteem. Equal division of assets and income, with one-half owned by the well spouse, would still not be a panacea. For example, lets assume a married couple has saved \$50,000 when one of them suffers an illness requiring long term care, for which there is not insurance coverage on the market and which is not covered by Medicare and supplemental insurance, even if the ill spouse qualified for Medicare. Under an even division of assets, the well spouse would have \$25,000 and would give up all income above \$8,600 per annum. This is not much to live on. The ill spouse, with an assumed monthly nursing home bill of \$1,500 would be out of assets in about one year and three months. With life savings of \$75,000, the well spouse in this example would be left with \$37,500 to live on, plus no more than \$8,600 in income, while the ill spouse would be cared for in a nursing home for two years at \$1,500 per month.

#### Conclusions

Chairman Wunsch and Committee members, I would like in closing, to briefly make five personal observations related to the subject under discussion today which concern me deeply:

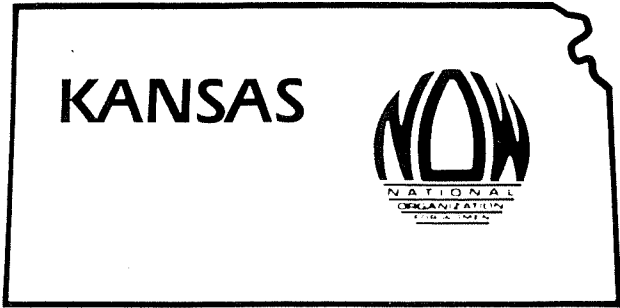
1. I know there is little your Committee or the Kansas Legislature can do about it, but I perceive it to be grossly unfair for our nation to pick up the tab for citizens under Medicare and supplemental coverage who are multi-millionaires and who require, for example, open heart surgery or a similar high cost illness, yet refuse coverage for those citizens suffering from acute organic illness such as Alzheimer's disease. Such citizens are not mentally ill; they have an acute organic disease which destroys the brain cells just as heart disease destroys the heart cells.
2. Our American society, or much of it, considers the marriage vows as sacred. Yet many lawyers feel professionally obligated to advise clients that divorce may be the only way to divide assets. This is tragic.
3. It is said that if a wife or husband is going to have an organic disease, such as Alzheimer's, the couple should either be very wealthy or be very poor. As it stands now, if you are in the middle, you are most unfortunate, because the present rules may drive both spouses to poverty.
4. It seems inconsistent to me that the Federal Government allocated about \$79 million in 1986 for Alzheimer's research and pilot projects, and I perceive this to be money well spent, while in the meantime assistance for the present victims and their families remains beyond reach until the victim and the spouse are driven into abject poverty. With other types of illness, where such intense research efforts

are underway, those who are already victims of such diseases automatically receive assistance and their help is not conditioned upon prior impoverishment of their spouse.

5. In conclusion, perhaps some of you may have experienced the searing pain of the illness and death of a spouse or child. Please believe me, you have my sympathy because I know this pain. I tell you if only my wife, Marj, could have her organically destroyed brain cells restored, giving us back her bright and happy mind, her loving personality and her soul, I would gladly give away all of the assets for which we worked and saved, this minute. May I remind you that some of you may face this dilemma in the future, but for you, I hope not.

Thank you.

*Robert C. Guthrie*  
Robert C. Guthrie  
3000 W. 19th Street  
Topeka, Kansas 66604



DATE: 3/30/87  
 TO: House Judiciary Committee  
 FROM: Gail J. Hamilton, Kansas National Organization for Women  
 RE: SB 264, Division of Assets

Thank you Mr. Chair, members of the Committee. Kansas National Organization for Women has included spousal impoverishment or spousal division of Assets on its 1987 Legislative Agenda. We support legislation that addresses this issue.

There are two major reasons why we support legislation as contained in SB 264.

The first is that people aged 65 and over are the fastest growing segment of the population. By the year 2030 they could make up one fourth of the total U. S. population. In a study from the U.S. House Select Committee on Aging, about 86% of the elderly suffer from at least one chronic health condition and more than half are constrained by chronic illness. Health problems of the elderly are more likely to require the long-term, chronic care not covered by Medicare. Under current state and federal regulations it appears likely that a substantial percentage of the elderly run the risk of impoverishment under Medicaid either as an applicant or a spouse.

A second key reason for NOW's concern is that spousal impoverishment disproportionately affects women, who make up 80% of surviving spouses. Women not only live longer than men, but often receive smaller pensions from careers

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NOW/Hamilton

SB264 Testimony

interrupted for Childrearing or no pensions of their own due to a lifetime of unpaid work in the home or in low-paying service sector jobs. Traditionally, they have been dependent upon more valuable pensions and other financial resources listed in their husband's names.

Current federal and state regulations have been shortsighted in their approach to the serious issue of health care for the elderly. In Kansas SB 264 is a step forward in addressing this issue. We support your committee's favorable passage.



1986-1987  
KANSAS STATE LEGISLATIVE COMMITTEE

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March 31, 1987

S.B. 264  
DIVISION OF ASSETS

TESTIMONY BEFORE THE HOUSE JUDICIARY COMMITTEE

Mr. Chairman; members of the Committee:

My name is James V. Behan, I am Chairman of the Kansas AARP State Legislative Committee, representing 300,000 Kansas AARP members. The Committee supports Senate Bill No. 264, Division of Assets.

Optional Categorically Needy Medicaid Coverage

1. Persons with incomes up to a state-established income standard that does not exceed the federal poverty level.
2. Persons who receive optional state supplemental payments.
3. Persons in institutions who would be eligible for SSI if they were not in a facility.
4. Persons in institutions with income levels up to 300% of the SSI payment level.
5. Persons at risk of institutionalization who are receiving home and community-based long-term care services under a Medicaid waiver.

The proposal SB 264, as amended, is intended to soften the spend down requirement for Medicaid eligibility. It simply tries to keep the wife or husband of a nursing home resident from **impoverishment.**

American Association of Retired Persons 1909 K Street, N.W., Washington, D.C. 20049

Attachment XII  
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(202) 872-4700



In the way things work under Kansas law, paying the nursing home bills can take a couple's income, savings and finally the house. When they have nothing, Medicaid will start picking up the long-term care bills. But the one left in the community has lost all dignity and security, and on top of that, now needs welfare. Some intervention like the division of assets proposal makes sense before that stage of poverty.

What's encouraging is that Kansas lawmakers are thinking of this relief along with advocates of the elderly. Impoverishment due to long-term care happens to younger families, too, those whose members have Alzheimer's disease or other incapacitating conditions.

SB 264 is particularly applicable to middle-class families because it takes into consideration the situation of people who need terribly inflated long-term care, even though the cost is outside their control. The cost is also beyond what they have imagined--and therefore saved for--in their working years. What good are the golden years if you're broke?

#### Fiscal Impact

Data was not available to the Kansas AARP State Legislative Committee. Therefore, the calculations mentioned in the supplemental note on Senate Bill No. 264 cannot be verified. The committee is of the opinion that Kansas should verify projections against the known cost experience of states with division of resources rules, and with other states using more liberal eligibility guidelines.



Steps <sup>h</sup>ould be taken to allow spouses of Medicaid recipients to keep an equitable portion of the couple's income and assets. In addition, the financial barriers to obtaining long-term services at home should be eliminated.

The Kansas State Legislative Committee of the American Association of Retired Persons thanks the committee for this opportunity to testify. Kansas can be among a handful of state leaders in social service legislation.



**Alzheimer's Disease and Related Disorders Association**  
TOPEKA CHAPTER

P.O. BOX 1427  
TOPEKA, KS 66601

Testimony in support of SB 264

Wanda Blaser, RN, MSN  
President, Alzheimers Disease and Related Disorders Association  
Member, Kansas State Task Force on Alzheimers Disease

From my work as a support group leader and at the state task force hearings on Alzheimers Disease I have heard the priority family concerns as need for some type of financial assistance and acceptable insurance coverage. Long term care expenses are frequently devestating for persons/families requiring such care. Medicare is not designed to cover long term care and private insurance does little if anything to fill this gap. Without the benefit of private insurance for the long term care required for Alzheimers Disease, payments for these services have come to represent enormous out-of-pocket expense. Thus, as a result of funding their own extended care needs, many people become candidates for Medicaid.

Our Alzheimers families are in this category. They have worked hard to support themselves and through no ones fault are now forced to deal with a debilitating disease lasting an average of 8-10 years. I have seen spouses fear living in poverty, but realizing that is what they will have to do in order to receive the needed care for the ill spouse. We do not want to support a system that forces a married couple to choose between poverty or divorce to receive the care needed for a loved one.

I urge you to support SB 264 and provide the spouse of the Alzheimer's patient opportunity to receive needed care for his loved one while continuing to care for himself.