Approved April 7, 1987
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY.

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

3:30 ~~a.m.~~/p.m. on March 31, 1987 in room 313-S of the Capitol.

All members were present except: Representatives Buehler, Crowell, Peterson and Solbach 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:
Judge David P. Mikesic, Wyandotte County, Kansas City
Professor Donald F. Rowland, Washburn Law School
Dennis Priest, Medical Eligibility Program Supervisor, Social and Rehabilitation Services
Peter Rinn, Chief Counsel, Social and Rehabilitation Services
Lois Johnson, McDonald
Ralph Wright, American Association of Retired Persons

Hearing on S.B. 7 - Qualifications of District Judges-Re Proposal No. 5

Representative Wunsch, Chairman, explained the interim committee on the court system, in an effort to attract older judges and to retain trained judges for a longer period of time, introduced S.B. 7. S.B. 7 extends from 5 years to 10 years the required number of years of being actively engaged in the practice of law as a lawyer, judge of a court of record or any court in this state, full-time teacher of law in an accredited law school, or any combination therefore, before being elected, retained in office or appointed as a district judge. He distributed a chart listing the years of practice prior to judgeship and the age at the start of judgeship for the years 1978 through 1986. (See Attachment I)

A proposed amendment was distributed which is the part of S.B. 6 that deals with increasing the vesting for retirement of future judges. To attain 65% of final salary would take approximately 18 years instead of the present 15 years. (Attachment II)

Judge David P. Mikesic testified prior to 1975 there were no qualifications to become a district court judge, with the exception of being an attorney. He stated he would be vested at the age of 47. He questioned what the dollars will be worth when he becomes 62 and starts drawing his pension. He said it would be more attractive to become a judge at the age of 55, serve 10 years and retire at 50% of salary. He did not feel there is a need to change the qualifications.

The hearing was closed on S.B. 7.

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

Professor Rowland explained he was testifying at the request of the Topeka Chapter of the Alzheimer's and Related Diseases Association. He was a member of the 1985 Governor's Task Force on Alzheimer's and Related Diseases. The number one recommendation of the Task Force was "that a Division of Assets Law be passed to prevent the abject poverty of the well spouse in their attempts to provide care for an ill spouse". He urged the Committee to recommend this bill be passed. No state has yet lost federal money because of their solutions to this problem. The state plan might be disapproved by the Federal Department of Health and Human Services on any number of technical grounds not having to do directly with the new plan to divide income and resources, such as the lien provisions in the current bill.

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 xxxx./p.m. on March 31, 1987.

Professor Rowland submitted along with his testimony the fiscal analysis of the bill passed in the state of California and a paper he wrote, Division of Assets: A Status Report, Published in the Journal of the Kansas Bar Association, Vol. 55, No. 7, September, 1986. (See Attachment III)

Dennis Priest presented a summary of S.B. 264, as amended by the Senate Committee on Public Health and Welfare. He also presented testimony regarding S.B. 264 which included examples of resource and income division, exempted resources and the potential fiscal impact of amended S.B. 264. (See Attachment IV)

S.R.S. supports the amended version of S.B. 264 but noted the potentially high fiscal impact of the bill, as well as the need for clarification or technical revision of the language in several items. The combined fiscal impact for both the asset and income provisions was $2.2 million, or $1.1 million state general fund.

Lois Johnson testified in support of S.B. 264. She stated this is a good bill and one that would be the most help for the middle income couples. (See Attachment V)

Ralph Wright supported the $8,600 per year income and $25,000 resources, but recommended removal of the Senate amendment which requires prior approval by the Department of Health and Human Services. (See Attachment VI)

Written testimony was submitted by Basil Covey, Kansas Retired Teachers Association, (See Attachment VII); Marilyn Bradt, Kansans for Improvement of Nursing Homes, (See Attachment VIII); and Mark Intermill, Director of the Kansas Coalition on Aging, (See Attachment IX), in support of S.B. 264.

The meeting was adjourned at 5:05 p.m.

The next meeting will be Wednesday, April 1, 1987, at 1:00 p.m. in room 527-S.

GUEST REGISTER

DATE March 30, 1987
March 31, 1987

HOUSE JUDICIARY

NAME	ORGANIZATION	ADDRESS
[illegible] Peterson	Silver Haired Legislator	Manhattan Ks
Charles W. Stover	Topeka Chapter ADRA	Topeka, KS
Robert C. Guthrie	Topeka KS Chapter ADRDA	Topeka KS
Gerald G. Duree	AARP	Topeka Kans
Jewel Acke	Mature Outlook SB 264	Topeka, Kans.
Evelyn Falk	Mature Outlook SB 264	Topeka Kans
Evelyn Helberg	Mature Outlook SB264	Topeka, Kan.
LaVerne A Falk	Mature Outlook SB 264	Topeka Kansas
[illegible]	MATURE OUTLOOK SB264	TOPEKA, KS
Betty Mitchell	AARP - A.D.	Silver Lake, Ks
Harold C. Pitts	KCOA	Topeka
Marcella Briery	ADRDA Topeka Chapter	Topeka, KS
John W. Briery	"	" "
Virgil Hilderbrand	SHL DIST 3	TOPEKA. KANS
Charles Simmons	Dept. of Corrections	Topeka, KS.
Katie Pyle	Silver-Haired Legislature (SHL)	Topeka, Ks
Cedric Moege	Silver Haired Legislature	Topeka, KS
John Nicklin	ch 3702 AARP Clearview City	Kansas 66019
Edith Schumacher	ch 3702 AARP clearview city	Clearview city
Verna Watson	Ch 3702 AARP Clearview city	Clearview city
Mrs. Harry Stark	ch 3702 AARP Clearview City, KS	66019
Louis A. [illegible]	KDHR	TOPEKA
Marvel Chambers	KASDA SB 264	Wichita
Robert C. Foster	KASD. S/B 264	"
Alberta E. McClenny	Dept of Aging (SHL)	Topeka

GUEST REGISTER

DATE_______________

HOUSE JUDICIARY

NAME	ORGANIZATION	ADDRESS
Genaro Gutierrez	Mature Outlook 5B264	3117 Fremont
Ascension Gutierrez	Mature Outlook 5B264	3117 Fremont
Marguerite Chalmers	GLRLG	1311 Jewell 66604
JOHN C. BEURMAN	ADRDA Topeka, Ks 66605	3749 HOWARD DRIVE
PATRICK H. DONAHUE	KANSAS LEGAL SERVICE, INC 712 S KANSAS, TOPEKA, KS 66603	
MARCENE GRIMES	EX. DIR. ADRDA TOPEKA CHAPTER	P.O. Box 1427 Topeka 66601
Dennis Priest	SRS	Topeka, Ks.
KEITH R LANDIS	CHRISTIAN SCIENCE COMMITTEE ON PUBLICATION FOR KANSAS	"
Gail Hamilton	KS N.O.W.	Lawrence Ks.
Molly Daniels	Ks Dept on Aging	Topeka
Melanie Dorz	Washburn (Rowland)	Topeka
Howard Gray	ADRDA	Topeka
Fern Gray	ADRDA	Topeka

NAME	DISTRICT	YEAR TO BENCH	YEARS OF PRACTICE PRIOR TO JUDGESHIP	AGE AT START OF JUDGESHIP
DICK	5	78	22	46
FOSSEY	6	78	38	62
KING	7	78	24	48
BRADLEY	10	78	29	56
PALMER	14	78	11	41
WILLOUGHBY	15	78	27	53
BURR	15	78	8	36
WORDEN	17	78	6	30
KENNEDY	18	78	10	36
MCCARTHY	18	78	27	55
HORNUNG	18	78	40	64
GRAHAM	21	78	10	37
SMITH	4	79	13	37
CHRISTNER	8	79	29	60
SMITH	16	79	29	53
FOULSTON	18	79	12	36
GERNON	22	79	10	36
HILL	27	79	6	31
LAMAR	29	79	16	43
PODREBARAC	29	79	20	45
ROBINSON	29	79	11	37
WHITE	31	79	13	39
LORENTZ	31	79	10	35
JACKSON	3	80	20	45
REID	9	80	22	51
GRAY	10	80	32	55
CHIPMAN	10	80	32	60
MCWILLLIAMS	10	80	10	34
JONES	10	80	21	46
BENNINGTON	20	80	13	39
NYSWONGER	25	80	7	39
SIEVE	29	80	13	39
GRADERT	8	80	21	51
O'KEEFE	1	81	28	53
RULON	5	81	9	39
HILL	6	81	6	30
SANBORN	18	81	31	58
CLARK	18	81	12	43
RAMEY	26	81	6	35
LYLE	27	81	8	36
KNUDSON	28	81	15	40
MEEKS	29	81	14	38
BUCHELE	3	81	15	39
NAFZIGER	2	82	9	37
MALONE	7	82	9	34
PIERRON	10	82	11	34
ALLEGRUCCI	11	82	19	45
BREWSTER	11	82	14	37

Attachment I
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MILLER	21	82	10	35
VIEUX	25	82	6	33
BROWN	27	82	11	40
YANDELL	30	82	10	47
DOTY	4	83	33	59
BUCHANAN	18	83	25	51
KIMMEL	18	83	33	60
CRANMER	18	83	33	61
DEER	18	83	11	43
HARDY	29	83	32	59
DAVIS	1	84	20	45
SHEPHERD	7	84	7	38
HANDY	25	84	9	37
HERBERT	28	84	15	39
REGAN	3	85	17	43
MITCHELL	3	85	12	36
HART	6	85	9	33
WALKER	9	85	12	36
BOUSKA	10	85	33	59
MCCLAIN	10	85	14	43
THOMPSON	14	85	13	38
LONG	27	85	9	32
RUSSELL	10	85	8	35
KING	1	86	6	31
SANDERS	13	86	17	43
ROYSE	18	86	8	36
SYBRANT	19	86	39	63
BUKATY	29	86	17	41

Sec. , K.S.A. 1986 Supp. 20-2610 is hereby amended to read as follows: 20-2610. (a) A judge who retires under K.S.A. 20-2608, and amendments thereto, shall be entitled to receive an annuity subject to subsection (b), each monthly payment of which shall be in an amount equal to the total of 5% of the final average salary of the judge, determined as provided in subsection (b), multiplied by the number of the judge's years of service up to 10 years, and 3 1/3% of the final average salary of the judge, determined as provided in subsection (b), multiplied by the number of the judge's years of service in excess of 10 years, but such monthly benefits shall not exceed 65% of the final average salary of such judge, determined as provided in subsection (b). <u>A judge who retires under K.S.A. 20-2608 and amendments thereto, and who became a member of the system after June 30, 1987, shall be entitled to receive an annuity subject to subsection (b), each monthly payment of which shall be in an amount equal to the total of 3 1/3% of the final average salary of the judge, determined as provided in subsection (b), multiplied by the number of the judge's years of service, but such monthly benefits shall not exceed 65% of the final average salary of the judge, determined as provided in subsection (b).</u>

(b) For any judge who retires under K.S.A. 20-2608 or 20-2609, and amendments thereto, on or after July 1, 1975, the annuity shall be based on the final average salary of such judge as provided in this subsection. The final average salary of a judge who becomes permanently physically or mentally disabled and who is retired under K.S.A. 20-2608 or 20-2609, and amendments thereto, shall be determined as if such judge had retired on the date such judge became permanently physically or mentally disabled. The final average salary of a former judge whose service is terminated without retiring and who later retires under K.S.A. 20-2608, and amendments thereto, shall be determined as if such former judge had retired at the time such service was terminated. Except as otherwise provided by this subsection,

Attachment II
House Judiciary 3/31/87

final average salary shall mean the average highest annual salary paid to the judge for any five years of the last 10 years of service as a judge immediately preceding retirement or termination of employment, or if service as a judge is less than five years, then the final average salary shall be the average annual salary paid to the judge during the full period of service as a judge, or if service as a judge is less than one year, then the final average salary shall be computed by multiplying the amount of monthly salary such judge was receiving at time of retirement by 12. In the case of judges who retire on or after July 1, 1975, but prior to January 1, 1981, the final average salary of such judges shall be computed as follows:

(1) For retirement prior to January 1, 1976, the amount of monthly salary at the time of retirement multiplied by 12;

(2) for retirement during calendar year 1976, the total salary received during the last year of service as a judge;

(3) for retirement during calendar year 1977, the average of the total salary received during the last two years of service as a judge;

(4) for retirement during calendar year 1978, the average of the total salary received during the last three years of service as a judge;

(5) for retirement during calendar year 1979, the average of the total salary received during the last four years of service as a judge; and

(6) for retirement during calendar year 1980, the average of the total salary received during the last five years of service as a judge.

TESTIMONY OF DONALD F. ROWLAND
BEFORE THE HOUSE JUDICIARY COMMITTEE ON SB-264
MARCH 31, 1987

My name is Don Rowland. I am testifying today at the request of the Topeka Chapter of the Alzheimer's and Related Diseases Association. My experience with the problems of long-term care include three terms as Probate Judge, Ellis County, and for the past seventeen years as Professor of Law at Washburn Law School, where I have specialized in Probate Law. Working with the Washburn Law Clinic, I have supervised Senior law students in their representation of both the victim of catastrophic illness and their spouses in hundreds of cases.

In 1985 I was appointed to the Governor's Task Force on Alzheimer's and Related Diseases. The Task Force completed its work last year and a copy of that report was distributed to the Legislature. Five public hearings were held and over 100 persons testified. The number one recommendation of the Task Force was "that a Division of Assets law be passed to prevent the abject poverty of the well spouse in their attempts to provide care for an ill spouse."

Last summer the interim Judiciary Committee held three hearings on this subject and a subcommittee, chaired by Representative Bideau met at least three times. You have before you a well studied bill and a bill whose main objectives have met with no opposition, save SRS, who professes some doubt whether the law would be approved by the federal government.

I have read the testimony of Pat Donahue before this committee yesterday and I believe he gave you an excellent

summary of the current problems and solutions. Rather than rehash what has already been said I would like to make three points.

First I think I should say a word about the motivation of the spouses of the victims that I have represented over the years and have heard testify for the last year and a half. Those spouses are not trying to save their assets either for their own use or so that their children may inherit. They are simply trying to retain some minimum standard of living so that they will be in a better position to help care for the ill spouse. In spite of the terrible disincentive under the current law to seek employment, many who are able remain employed but, unless they are able to earn enough to pay the total nursing home bill and thereby remain out of the Medicaid system, the state is subrogated for the medical expenses paid for the ill spouse against the well spouse over the protected income level of $341 a month. Many, many times we have advised the well spouse that the only solution to the financial crisis is divorce and I have been amazed at how few times the spouse followed our advice.

The next point I would like to discuss briefly is the federal implications of this bill. First I would like to observe that no state has yet lost federal money because of their solutions to this problem. I had hoped that we would have a decision by this time from the Circuit Court of Appeals in the State of Washington and California cases. In the Washington case all the briefs were submitted in December and the oral arguments were held in the latter part of January 1987. We talked to one

of the lawyers involved in that case, who is expecting a decision next month. I believe a decision in that case will resolve the question of the state's authority to determine property rights between spouses, assuming the case is not appealed to the United States Supreme Court. I would like to say a word about the amendments by the Senate Committee to both the resource and income sides of this bill. Those amendments provide that the law will not be effective until the plan adopted is approved by the Federal Department of Health and Human Services. I have a gut reaction to that approach and it greatly troubles my western Kansas soul. I have visions of SRS sitting down with the federal bureaucrats with the new state plan in front of them, vying with each other, with some mirth, to find reasons why the state plan should be disapproved at the lowest level. Perhaps that's not entirely fair, but as a practical matter the Regional Office of Health and Human Services has 90 days after they receive the new state plan to determine whether or not the plan is approvable. Should the plan be disapproved at that point, Kansas has 60 days to file for a reconsideration of the decision. There is nothing in this bill that would require Kansas to even ask for the reconsideration. Should Kansas ask for a reconsideration, there is yet another 90 days before an administrative hearing. Should the state plan be disapproved after that hearing, then Kansas has an additional 60 days to determine whether to file in the United States Court of Appeals. So before Kansas would be involved in litigation, there is ten months from the time the new state plan is actually submitted to Health and Human Services. I should

point out that at least potentially the state plan might be disapproved on any number of technical grounds not having to do directly with the new plan to divide income and resources, for example, the lien provisions in the current bill. My prediction is that the language in the current bill will almost assure that the next session of the Legislature will be again wrestling with this problem.

Obviously this bill will have some fiscal impact and, to be effective, must have some fiscal impact. I found it to be very difficult to determine given the large number of assumptions that need to be made. I have attached to my testimony the fiscal analysis of the bill passed in the State of California so that you might see the methodology they used in arriving at the annual program cost of $5,167,700, approximately half state money. We talked to the Program Analyst, Ruthell Ussery, in February. She says that their Division of Resources statute has, to date, caused no increase in cost of Medicaid. They believe that later there would be an increase in cost, but right now had no idea what that might be. Their Division of Income statute, she says, has a fiscal impact of about $2 million a year. California is now estimating approximately 10% of their long-term health care institutionalized persons currently have spouses. That figure would need to be reduced somewhat for those situations when both spouses are institutionalized. I note that the Kansas estimates are 14% of the total. Whatever the estimates might be for Kansas, there doesn't seem to be a reduction for those monies that might be recouped by the lien provisions in the current

bill. Should the current bill be passed with the provisions for implementation after approval by Health and Human Services even if approved, I would have doubt whether there would be any impact on fiscal year 1988 or, for that matter, in any other year. Even if the bill passes without those provisions and, assuming that the estimated 450 persons who would be effected by the bill is correct, I find it difficult to believe that all the 450 persons would immediately take advantage of the new law in the first month of fiscal year 1988.

I would urge the Judiciary Committee to recommend to the House passage of a meaningful solution to very real problems facing Kansans.

VG/RV →

State of California
Department of Health Services
Prepared by: Maura Donovan
Phone Number: 4-2018
Reviewed by: Marc Lowry

Fiscal Forecasting Section
AB 987
March 21, 1985

FISCAL ANALYSIS OF AB 987
AS INTRODUCED FEBRUARY 26, 1985

Medical Assistance

AB 987 affects the income and property considered available to a Medi-Cal applicant or beneficiary in long-term care (LTC).

Under current law, when a marrried person enters LTC the person's separate property and 1/2 of the community property is counted in determining whether the property is within the property limit ($1,500). If the property is in excess of the property limit because of community property, the entire community property must be reduced to the point that one-half of it is below the property limit. The exception to this is if the couple executes a written interspousal agreement which divides and transmits community peroperty into equal shares of separate property (AB 2615 Chapter 1518 Statutes of 1984). In this case the spouse in LTC would only have to spenddown the property deemed to him/her via the agreement.

AB 987 specifies that in cases where there is no interspousal agreement community property is to be divided at the point the person enters LTC. It requires that the property deemed available to the person in LTC must be spent on that person's need. This differs from current law under which community property may be spent on the needs of either spouse.

Currently, when a person enters LTC all of the person's own income (other than any amount allocated to a spouse and/or children to meet their needs) is considered in determining the LTC person's share of cost (SOC). The income of the family members at home is never considered available to the person in LTC. AB 1667 (Chapter 1030, Statutes of 1983) specified that, to the extent permitted in federal law, when one member of a couple enters LTC, each member of the couple is considered to have one-half of the community unearned income. This bill was never implemented because we received a letter from the Secretary of Health, Education and Welfare specifying that splitting the income is not allowed under current federal law and was not one of the areas in which the Secretary would grant a waiver.

AB 987 specifies that both community unearned income and earned income are to be divided equally. It also specifies that this is to occur even if this method of dividing income is in conflict with federal law.

MAR 22 1985

Assumptions

A. Property

1. There are approximately 65,000 persons in LTC who do not have a spouse who is also in LTC.

2. Assume 10 percent have a spouse living at home.

   65,000 x .10 = 6,500

3. Approximately 50 percent of the caseload is new each year.

   6,500 x .5 = 3,250 annual LTC couple applications

4. Approximately 20 percent of LTC applicants are private pay (other than Medicare eligible) before they become eligible for Medi-Cal. Assume excess property is the reason they are private pay and that they would be affected by this bill.

   3,250 x .2 = 650 LTC applicant potentially affected each year

5. The couples who currently establish interspousal agreements are unaffected by this legislation. Since AB 2615 required all Medi-Cal applicants be notified of this option it can be assumed that all those couples advantaged by such an agreement are completing one.

6. This bill requires that when the assests are split when the person enters LTC, the half belonging to the LTC person must be spent on his/her needs. This would potentially increase the time the person was ineligible for Medi-Cal because the money could not be spent on items for the spouse (furniture, car, etc.) as it can currently. Assume this decrease in the months of eligibility for this group will offset the cost of more months of eligibility for those LTC persons who become eligible sooner because the community property is split. Therefore, there is no identifiable cost impact.

B. Income

1. Assume that in the majority of the 6,500 couple cases the member of the couple in LTC is male and has all or the majority of the income.

2. The average SOC for LTC persons is $370 which means their average countable income is $405.

3. Assume 25 percent of the spouses at home are on SSI/SSP. Because their needs are met, no allocation is currently made from the spouse in LTC. If the one-half of the income of the LTC person is counted at available to the spouse the cost would be:

   $405 ÷ 2 = $202.50
   $203 - $35 MNL = $168 new SOC
   $370 - $168 = $202 lost SOC

6,500 x .25 = 1,625
1,625 x $202 x 12 months = $3,939,000 lost SOC

4. Although the spouses on SSI/SSP have increased income of $202 there is no savings to the State as the income is below the SSI level of $314 and will be subtracted from the Federal SSI payment first.

5. Based on the Share of Cost Report, 70 percent of persons in LTC have a SOC of less than $450. In couple cases this means the LTC person's income is $969 or less. There would be no change in these cases as the SOC of the person in LTC would not change when income is split in half.

   6,500 - 1,625 = 4,875
   4,875 x .7 = 3,413 LTC persons not affected

6. Based on the SOC report, the average SOC for the 1,462 couple cases with a SOC over $450 is $616. Assuming the LTC person allocates $484 to the spouse, the LTC person's income is $1,135 a month. The impact of dividing the income in half is:

   $1,135 ÷ 2 = $567.50
   $568 - $35 = $533 SOC
   $616 - $533 = $83 lost SOC
   1,462 x $83 x 12 months = $1,456,200 lost SOC

7. Assume 25 percent of the spouses of the 1,097 LTC persons above are on Medi-Cal with no SOC. With $533 allocated to them rather than $484 they will have an average SOC of $49. Thirty percent will meet it, saving the SOC amount each month. Seventy percent will not meet the SOC saving the average monthly cost per MN without inpatient of $53.

   1.462 x .25 = 366
   366 x .3 x $49 x 12 months = $64,562
   366 x .7 x $53 x 12 months = $162,943
   $64,562 + $162,943 = $227,500 annual SOC savings

8. The maximum total impact of splitting spousal income is:

   $3,939,000 + $1,456,200 - $227,500 = $5,167,700

   The impact could be lower if the spouse's at home have income.

9. The method for treatment of income defined in this bill would continue until the Department receives a formal ruling from HEW stating such a method is not allowed. Based on Welfare and Institutions Code 11003, it would then be discontinued, sine the bill does not provide for state only funding.

SUMMARY OF FISCAL IMPACT

AB 987 will result in maximum annual program costs of $5,167,700 ($2,583,850 GF).

PROGRAM ANALYST CONTACTED: Ruthell Ussery
PROGRAM ANALYST'S ADDRESS: 8/1650
PROGRAM ANALYST'S PHONE: 4-4970
PROGRAM CONCURRENCE: YES

cc: Margaret Ware
Budget Section
8/1040

4869D

Published in The Journal of the Kansas Bar Association, Vol. 55, No. 7, September, 1986.

DIVISION OF ASSETS: A STATUS REPORT

The Interim Committee on the Judiciary has been wrestling this summer with the question of the appropriate financial responsibility of one spouse for the medical needs of the other. Perhaps wrestling is not a strong enough word when the subject involves Title XIX of the Social Security Act and the Medicaid program, which Chief Justice Burger has called "a morass of bureaucratic complexity," and Judge Friendly has described as "a Byzantine construction making it almost unintelligible to the uninitiated." Apparently, the Kansas House was not intimidated. House Bill 3063 was introduced in the 1986 session by the Committee on Public Health and Welfare and referred to the Interim Committee for study. That bill would amend K.S.A. 39-709 and K.S.A. 39-719a and substitute a new section that provides a husband and wife may separate their income and resources into equal shares for purposes of determining eligibility for medical assistance under the Medicaid program. The bill places new limits on the subrogation rights the Secretary of Social and Rehabilitation Services now has against a spouse when medical assistance has been paid for the other spouse. There would be no subrogation rights to income at or below the national median family income. After a separation of resources, the resources of the well spouse would not be subject to subrogation.

The proposed legislation is a result of the growing concern for the plight of a well spouse when a sick spouse is placed in a nursing home, brought into focus by the Alzheimer's and Related Disorders Chapters in Kansas and the Governor's Task Force on Alzheimer's. Long-term care insurance, until very recently, has not been available at any price and the Social Security Medicare program covers only skilled nursing home care for short periods of time. Yet, Medicare and private insurance pay only about three percent of the total nursing home care costs in the United States. The only government program that is available to assist in the payment of long-term care is Medicaid. Medicaid is a joint federal and state program which pays for the medical and care costs of the medically needy under Title XIX of the Social Security Act. In Kansas, Medicaid is operated by Social and Rehabilitation Services following the regulations of the Health Care Financing Administration of the U. S. Department of Health and Human Services. In Kansas, there are approximately 19,000 persons in nursing homes, with over 10,000 in the Medicaid program. Currently, Kansas and the federal government each spend approximately 48 million dollars paying the nursing home bills of the needy.

In determining the eligibility for Medicaid where only the one spouse applies for the program, federal and state regulations provide that the resources and income of the well spouse are "deemed" to be available to the sick spouse as long as they are living together. When they are separated because of the need of

institutionalization for the sick spouse, the deeming rule applies only during the first month of institutionalization.[1] After the first month of institutionalization the following eligibility rules apply:

RESOURCE LIMITS:[2]

1. The home, household goods, a car, and $1,700 are protected resources. All other resources belonging to the sick spouse must be spent down to the $1,700 level prior to eligibility.

2. Jointly-owned personal property is deemed to be an available resource to the sick spouse and must be spent down in full.

3. Jointly-owned real property is divided equally and the sick spouse's half must be spent down.

INCOME LIMITS:[3]

Kansas follows the "Name on the Instrument Rule" in regard to income.

1. The first $25 per month of income belonging to the sick spouse is protected income. All other income belonging to the sick spouse is available for payment of the costs of care.

2. The income of the well spouse is not counted as available for purposes of eligibility. Should the well spouse's

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[1] 42 C.F.R. § 435.723 (d)

[2] K.A.R. 1983 30-6-106 to 30-6-109.

[3] K.A.R. 1983 30-6-110 to 30-6-113.

income be less than $341 per month, income from the sick spouse up to that level can be diverted to the well spouse.

The eligibility requirements in Kansas, however, are only part of the story as the Kansas statutes now provide that the Secretary of Social and Rehabilitative Services is subrogated for all monies paid out under the Medicaid program to those who are bound by law to support that person, which simply means that the Secretary of SRS requires that the well spouse reimburse the state from non-protected resources and income for all payments under Medicaid until the well spouse has resources of $1,700 or less and income of $341 per month, thus reducing both spouses to the poverty level.[4]

Other states have attempted to prevent the impoverishment of the well spouse in a variety of ways. New York has seen a number of successful support suits brought by the well spouse against the sick spouse and where the court divided the couple's income.[5]

This year, the California legislature passed a bill that permits an agreement between spouses equally dividing their property and, if there has not been an agreement, the resources are regarded as equally divided as of the date of the institutionalization of one of the spouses.[6] This state's Medicaid

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[4] K.S.A. 39-719a.

[5] Department of Social Services on behalf of Joseph M., Petitioners v. Barbara M., Respondent. Family Court, Dutchess Co., 123 Misc.2d 523. Also see Brill v Perales 82-CV-1271 (N.D.N.Y. 1985)

[6] Cal. Welf. and Inst. Code 14006.2 (c) 1986

plan, incorporating the new statute, was not approved by the Secretary of Health and Human Services and the matter is currently pending in the United States Court of Appeals for the Ninth Circuit.

The Supreme Court of Washington held in Purser v. Rahm that

> Washington community property law was not preempted for purposes of determining ownership of income in computing eligibility for medicaid benefits for nursing home costs by federal medicaid statutes or regulations, and thus Washington Department of Social and Health Services could be required to apply community property laws in computing eligibility.[7]

Subsequently the Washington Legislature enacted Senate Bill No. 4659 which permits agreements between spouses transferring resources and the income produced by the transferred resources. The bill further provides that if the community income received in the name of the nonapplicant spouse exceeds the community income received in the name of the applicant spouse, the applicant's interest in that excess shall be considered unavailable to the applicant. The Washington Medicaid plan incorporating that statute has also been disapproved and is now pending in the United States Court of Appeals for the Ninth Circuit.[8]

Thus, the newly-written statutes in these and other states attempting also to wrestle with the issue are meeting opposition from the federal government. Kansas is not alone.

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[7] 702 P.2d 1196 (Wash. 1985)

[8] Docket No. 86-7188.

After hearings on the Kansas Bill 3063, the Interim Committee referred it to a sub-committee for further study. The sub-committee reported four options for the consideration of the full committee.

Option one: All joint tenancy property is to be treated on a pro rata basis triggered by the institutionalization or home-based care service of one spouse.

Option two: In addition to option one, a transfer of $25,000 total assets would be allowed with a lien against the estate upon the death of the well spouse.

Option three: A division of assets would be permitted with a fourth class claim against the estate. Subrogation against the well spouse limited to income in excess of $8,600 per year.

Option four: An income division would be permitted up to a maximum of $8,600 per year.

The full committee met on August 28, 1986 to consider the report of the sub-committee. At that meeting, there seemed to be a general consensus that a bill dealing with a division of assets and income should be recommended by the Interim Committee, but it was less clear what form a bill might take. The Interim Committee directed that three bills be drafted incorporating all four options, which will again be considered at their October meeting. It appears that the next session of the legislature has the opportunity to provide some method of dividing assets between spouses short of divorce.

Donald F. Rowland, J.D., Washburn University School of Law '59, has been Professor of Law at Washburn University since 1970 and recently served on the Governor's Task Force on Alzheimer's and Related Disorders.

SUMMARY OF S.B. 264

(As Amended by the Senate Committee on Public Health and Welfare)

Senate Bill No. 264 permits an applicant or recipient of medical assistance who enters an institution or begins receiving home-and community-based services (HCBS) to divide the aggregate resources and income of the applicant/recipient and his or her spouse into separate shares. By doing so, only the separate resources and income of the applicant/recipient will then be considered for eligibility purposes.

Two written agreements between the spouses are required; one to divide their resources and one to divide their income. Both spouses or their personal representatives must sign the agreement and then formally carry out the division. In the case of resources, the division will be presumed to have been made at the time the agreement is filed with the agency so long as evidence of the completed division is provided within 90 days of the filing date. Additional time can be allotted for good cause.

The aggregate amount of income as well as the aggregate amount of exempt resources of the spouses shall be divided 50-50. For nonexempt resources, if the aggregate amount is less than $50,000, the applicant/recipient's spouse shall be allowed to gain ownership of up to $25,000 of the resources. If the aggregate amount is $50,000 or more, the resources shall be divided 50-50.

Divisions of resources which occur in accordance with this legislation shall not be considered under the Department's transfer of property provisions. In addition, the Department is prevented from recovering any amounts paid for future medical assistance or subrogating any future rights to medical support on behalf of the applicant/recipient from his or her spouse's resources. The Department may, however, establish, enforce, and foreclose liens on the real property of the recipient and his or her spouse for purposes of later recovery as authorized under federal statute.

For divisions of income, the applicant/recipient's spouse shall still have a duty to provide future medical support to the applicant/recipient if the spouse's share of the income exceeds $8,600/year. As a result, the Department is prevented from recovering future medical support from the applicant/recipient's spouse if his or her income is less than $8,600/year. If the income is greater than $8,600/year, the Department may only recover from that amount which exceeds $8,600. By the same token, the Department's subrogation rights are subject to the same limitations.

The Department must inform all qualified applicants and recipients of their right to divide resources and income under the provisions of the bill. The bill will take effect upon approval by the federal Department of Health and Human Services of the State's Medicaid State Plan implementing the provisions.

STATE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

Testimony Regarding S.B. 264 (as amended by the Senate Committee on Public Health and Welfare)

I am appearing today in regards to the proposed legislation contained in the amended version of Senate Bill No. 264.

The proposed changes would permit an applicant or recipient of medical assistance who enters an institution or begins receiving home-and community-based services to divide the aggregate resources and income of the applicant/recipient and his or her spouse into separate shares. Only the separate resources and income of the applicant/recipient would then be considered in determining his or her eligibility for medical assistance. The first attachment to this testimony describes the division criteria by means of several examples.

The Medicaid program is the primary source available for payment of long term care. Under current Medicaid regulations, the total resources and income of the applicant/recipient must be considered in determining his or her eligibility. In light of these regulations, the bill would help alleviate the financial burden faced by a number of married couples throughout the State when a member of that couple must enter a nursing home for long term care. It provides financial protection for the spouse who remains in the community, particularly in those instances in which the applicant/recipient owns most of the couple's resources and/or receives most of the income.

The Department in its previous testimony before the Senate Committee on Public Health and Welfare supported the division of assets provision but was unable to support the division of income provisions because they violated federal Medicaid statutes and regulations. The amended bill incorporates a new item in both Sections 2 and 3 which allows for implementation of the resource or income provisions only upon the approval of the federal Department of Health and Human Services (DHHS). Based on these amendments, the Department would now be supportive of the bill but wishes to address several concerns and issues.

It should first be noted that the bill carries a potentially significant fiscal impact. As noted on the attached fiscal impact statement, the total yearly impact could be as high as $2.2 million with half of that amount coming from the State General Fund. Based on the State's current budget crisis and the Department's own appropriations level, the bill could further aggravate current fiscal problems. If the bill is enacted in its present form, the Department would likely have no choice but to request additional funding.

Secondly, in regards to the issue of dividing assets, Medicaid regulations require that both real and personal property, whether jointly or solely owned by the applicant/recipient, must be considered including land, checking and savings accounts, trust funds, and life insurance. While certain resources are excluded from consideration such as the home the spouse continues to live in and an automobile, by and large most assets are viewed as being available to meet the cost of nursing home care. The second attachment to this testimony describes the resource exemptions in more detail. If most of the nonexempt assets are jointly owned between the spouses and/or are solely owned by applicant/recipient, the spouse at home is left unprotected and, in many instances, may be forced into impoverishment based on using all of the couple's resources to meet

the cost of nursing home care. The bill helps to prevent this from occurring by allowing the resources to be apportioned between the two spouses.

However, federal reaction to such a change may be negative. Section 1917(c) of the Social Security Act permits states to deny eligibility to persons who dispose of their resources at less than fair market value. This provision is commonly known as the "transfer of property" provision. Kansas has had a long standing policy based in statute for denying eligibility due to an inadequate transfer of resources. This policy is reflected in the State's Medicaid State Plan, the document by which the federal Health Care Financing Administration (HCFA), the agency responsible for administering the Medicaid program, reviews and audits our Medicaid eligibility policies. As we would be required to amend this plan in order to account for the provisions of the bill, HCFA could reject a change to our transfer policy for two reasons. First, the bill allows an applicant/recipient to transfer substantial amounts of resources to his or her spouse without compensation and for the purpose of becoming eligible for Medicaid. Secondly, it would have a direct impact on federal expenditures. It is important to note that approximately six other states have similar provisions regarding division of assets and no federal action has been taken against those states. However, based on conversations with HCFA Regional staff in Kansas City last fall concerning the issue, the potential for such action still exists.

In addition to this issue, the current language in the division of assets section raises two concerns which the Department believes requires further clarification. Items (a) (1) and (2) of Section 2 provide that once a division has taken place, only the separate resources of the applicant/recipient are to be taken into consideration for eligibility purposes in all future months. This language would then appear to prohibit the Department from considering the resources of that person's spouse should the applicant/recipient return home to live with the spouse at some point in the future. Although such returns are fairly infrequent, they do occur and need to be accounted for in the bill. As "long term care" is defined as care which exceeds 3 months, it would not be out of the question for a person who requires major surgery to spend a month or two in a hospital followed by several additional months of recovery and rehabilitation in a nursing home. Such person would qualify for a division of income and assets and would likely do so to obtain Medicaid eligibility to help pay for the substantial amount of medical expenditures which would have been incurred. Once he or she returns home, federal regulations require that we consider the total combined resources of the husband and wife. The bill, therefore, needs to be further modified to reflect this issue as it would provide another reason for rejection by the federal agency.

Item (a) (3) of Section 2 provides that also once a division has taken place, the resources of the applicant/recipient's spouse shall not be considered available for future medical support purposes and that the spouse shall have no duty to provide future medical support from his or her resources. Item (a)(4) then goes on to prohibit the Department from recovering medical assistance paid on behalf of the applicant/recipient from the spouse's resources. This language would appear to prohibit the Department from filing for medical support not only against the resources acquired by the spouse through the division but also any

resources later acquired by the spouse through some other action. For example, the applicant/recipient's spouse might receive a $50,000 inheritance which could not be viewed for recovery or support purposes. It is our belief that this was not the intention of this section as the bill prohibits future divisions of resources. The language should be further clarified to apply only to the assets which were divided.

Third, in regards to the provisions for dividing income, as mentioned previously, the bill violates federal Medicaid statutes and regulations and, therefore, creates the potential for federal action based on noncompliance as well as the potential for loss of federal funding and fiscal sanctions. Specifically, the bill violates section 1902(a) (10) (C) (i) (III) of the Social Security Act which requires states to apply the same financial methodologies for determining Medicaid eligibility of the aged, blind, or disabled as are applied in the Supplemental Security Income (SSI) program. SSI regulations at 20 CFR 416 require that any income received by the individual be counted in determining eligibility.

The bill also violates section 1902(a) (17) (B) of the Act which requires states to take into account all of the income and resources available to the applicant or recipient. By the same token, Medicaid regulations at 42 CFR 435.725 and 435.726 specify that the individual's total income must be considered in determining his or her obligation for care.

The Medicaid regulations do permit the institutionalized individual to allocate a portion of his or her income to the spouse at home to help meet the spouse's maintenance needs. However, the amount which can be allocated is limited to the State's Medicaid income standard for one person which is currently $341/month. The bill would in essence allow the applicant/recipient to allocate up to $717/month of his or her income and thus exceeds the regulatory limit.

Based on the above provisions, it is certain that HCFA would reject any amendment to our Medicaid State Plan which would implement a division of income procedure. It should be noted that two states, California and Washington, have attempted in the past year to submit amendments implementing similar provisions in their State Plans. The Health Care Financing Administration has rejected the amendments and both states are currently fighting the issue in federal court. No final decisions have been rendered at this time.

In addition, the Department has the same concern regarding the language of the division of income section as it does with the language of items (a) (1) and (2) of Section 2. Items (a) (1) and (2) of Section 3 provide that once an income division takes place, only the separate income of the applicant/recipient is to be taken into consideration for eligibility purposes in all future months. Once again, should the applicant/recipient return to the home to live with his or her spouse, federal regulations mandate that we consider their combined income. Further modification is needed in this area which would parallel the revision to the asset provision specified earlier.

Finally, several technical amendments are seen as necessary. First, in the definition of long term care contained in item (n) of Section 1 the phrase "including the month the care begins" should be added. This would parallel the Department's current definition of long term care.

Secondly, in item (a) (1) of Section 2 and item (a) (1) of Section 3 reference is made to the consideration of the separate resources and income of the applicant/recipient beginning either in the month following the month in which the applicant/recipient becomes a qualified applicant or recipient or in the seventh month following the month he or she becomes a qualified applicant or recipient. These provisions were originally based on the Medicaid provisions contained in 42 CFR 435.723. The Medicaid provisions however are based off of the month the person actually entered the institution or began HCBS. Therefore, the wording in both of these items needs to be revised to require that the separate resources and income of the qualified applicant or recipient be considered in either the month following the month he or she entered the institution (or began receiving home-and-community-based services) or the 7th month following that month.

Lastly, further modification is needed in subpart (B) of item (a) (1) of Section 3. This provision covers the current Medicaid requirement that if a husband and wife enter the same facility and share the same room, their combined income must be considered for 6 months. This has also been applied to HCBS situations where the husband and wife continue to reside together. Although the phrase used in line 0232, "the same residence," would be appropriate for HCBS, it is not entirely correct for institutionalization. If the husband and wife enter the same institution, their combined income would not be considered unless they shared the same room in that facility. Therefore, the wording needs to be modified to state that the combined income would be considered for 6 months if the applicant/recipient and his or her spouse enter the same facility and share the same room or if they continue to live together while receiving home-and-and-community-based services.

In summary, the Department would support the amended version of S.B. 264 but notes the potentially high fiscal impact of the bill as well as the need for clarification or technical revision of the language in several items.

Robert C. Harder
Secretary
Social and Rehabilitation Services
913 296-3271

March 31, 1987

ATTACHMENT I TO TESTIMONY ON AMENDED S.B. 264 -
EXAMPLES OF RESOURCE AND INCOME DIVISION

RESOURCES

S.B. 264 provides for a 50-50 split of the total combined exempted resources of both spouses. For nonexempt resources, if the aggregate value of the couple's resources is less than $50,000, the applicant/recipient's spouse shall be allowed to gain ownership of up to $25,000 of the resources. If the aggregate value is $50,000 or more, the resources shall be divided 50-50. The following examples illustrate how the provision works.

1. Husband enters nursing home and applies for assistance. He and wife own the following assets:

   A home (in both names)
   1 car (in both names)
   $10,000 Certificate of Deposit (in husband's name)
   $500 checking account (in both names)

   Both the home and car are currrently split. The total value of nonexempt resources is $10,500. As this is less than $50,000, the wife would be allowed to gain full ownership of the C.D. and checking account. The husband would remove his name from these resources and would, thus, have no countable resources for eligibility purposes.

2. Same situation as No. 1 except C.D. has value of $30,000.

   The wife can gain ownership of $25,000 of the C.D. Husband would retain $5,000 (set up in a separate account) as well as ownership of $500 checking account.

   His countable resources would thus equal $5,500 and he would be ineligible until total value fell below $1,800 resource limit.

3. Application filed for wife who enters nursing home. The following resources are owned:

   1 home (in both names)
   1 car (in husband's name)
   $20,000 IRA account (in both names)
   $300 checking account (in both names)
   $40,000 inherited piece of land (owned by wife)

   Neither the home or car are further divided. The total value of the nonexempt resources is $60,300. As this exceeds $50,000, a 50-50 division would be applicable.

   Husband would be given $10,000 of IRA, $150 of checking account, and 1/2 ownership in the land ($20,000 value) for a total of $30,150.

   The wife's remaining $30,150 share would still be in excess of the resource limits and would render her ineligible until brought down to $1,800.

INCOME

S.B. 264 provides for a 50-50 split of the total combined income of the spouses. The following example illustrates how the provision works.

Husband enters nursing home and files for assistance. The couple has the following income:

$350/mo.	Social Security - wife
$600/mo.	Social Security - husband
$950/mo.	total

The income would be split so that each receives $475/mo. This would likely occur by husband sending $125 of his income to the wife each month.

Only $475 of husband's income would be considered for eligibility purposes.

ATTACHMENT II TO TESTIMONY ON AMENDED S.B. 264 - EXEMPTED RESOURCES

Under current state and federal regulations, the following resources are not considered in determining medical eligibility for an aged, blind, or disabled person.

1. The home if used as the person's principal place of residence. If the person does not reside there, the home would still be exempt if he or she intends to return to it at some time or if the person's spouse, dependent children, or dependent relative continue to live there.

   NOTE: The home includes the tract of land and contiguous tracts of land upon which the house or other improvements are located. There is no acreage limitation.

2. One automobile per family. Additional automobiles may be exempt if shown to be essential for employment for self-support, for medical treatment, or if specially equipped for use by a handicapped person.

3. Income producing real and personal property, other than cash assets, whose total equity does not exceed $6,000 and whose net annual return is at least 6% of equity. Equity in excess of $6,000 is considered nonexempt.

4. Life insurance not exceeding $1,500 face value for each family member. If in excess of $1,500, all cash surrender value must be considered.

5. Burial spaces, caskets, urns, and other burial repositories for each family member.

6. Revocable burial funds of up to $1,500 per person. Face value of any life insurance reduces the amount which can be exempted.

7. Personal effects and keepsakes. Also household equipment and furnishings in use.

8. A contract from the sale of real or personal property if the proceeds from the contract are considered as income.

9. Proceeds from the sale of a home if the proceeds are conserved for the purchase of a new home and are then expended or committed to be expended within 3 months of the sale.

A family may own nonexempt real or personal property with a value not in excess of $1,800 for 1 person or $2,700 for 2 or more persons.

POTENTIAL FISCAL IMPACT OF AMENDED S.B. 264

As mentioned in the testimony, the protected total year fiscal impact of S.B. 264 is $2.2 million. Approximately half of this amount would be from the State General Fund. This is based on 1980 Census data for Kansas regarding the percentage of institutionalized persons who are married and the number of persons who would be advantaged by the bill based on their income and projected resources.

According to the 1980 Census data, of the 36,000 persons who are institutinalized, 4,992 are married or 14% of the total. The current adult care home population in Kansas is approximately 25,000 with 12,000 receiving Medicaid payment and 13,000 in private pay status. Thus, approximately 1,680 Medicaid clients (14% x 12,000) and 1,820 private pay clients (14% x 13,000) are presumed to have spouses at home. It is also presumed that most of the current private pay individuals will convert to Medicaid payment during the year.

In regards to the provisions of Section 2 on divisions of assets, the current Medicaid population would not be impacted as they already meet resource criteria. Thus, only the private pay clients with spouses at home (1,820) would be potentially affected by the legislation.

Census data shows that 8.5% of the total Kansas population have incomes in excess of $8,000/year. It is presumed that a majority of these individuals will have some countable resources and might therefore fall under the provisions of the bill. It is also presumed that persons who divide their resources in accordance with the bill will qualify for an additional 12 months of medical assistance beyond what they would receive under current policy. Based on these assumptions the fiscal impact for the asset division would be:

8.5% of 1,810 persons = 154 persons affected.

154 persons x $700/month projected average cost of care in an Intermediate Care Facility x 12 months = $1.29 million.

In regards to the provisions of Section 3 on division of income, both Medicaid and private pay clients would be impacted by the legislation. As mentioned in the testimony, Medicaid regulations currently permit institutionalized persons to allocate up to $341/month to the spouse at home. Thus, based on the bill's premise of equally dividing the couple's aggregate income, the couple could currently have up to $682/month or $8,184/year in aggregate income which could be equally divided under current law. The bill would essentially allow the amount of allocation to increase to $717/month ($8,600/year protected for spouse in bill). The couple could then have up to $1,434/month or $17,200/year in total income which could be equally divided without exceeding this limit.

Census data shows that approximately 6% of the total Kansas population have yearly income in the range between $8,184 and $17,200. If the bill would result in an average of an additional $200/month in spousal allocation, then the impact would be as follows:

6% of 1,680 persons = 100
6% of 1,820 persons = 109
209 total persons affected

209 persons x $200/month x 12 months = $501,600

Census data also reflects the fact that 2.5% of the total Kansas population have incomes in excess of $17,200/year. Thus, under the bill's provisions, these persons could allocate an additional $376/month above and beyond current policy ($717/month - $341 current allowable allocation). The impact for this group would be as follows:

2.5% of 1,680 persons = 42
2.5% of 1,810 persons = 45
87 total persons affected

87 persons x $376/month x 12 months = $392,544

The fiscal impact for the income division is then $894,144 ($501,600 + $392,544).

The combination of fiscal impacts for both the asset and income provisions results in a total fiscal impact for the bill of $2.2 million ($1.29 million + $894,144) or $1.1 million SGF.

TESTIMONY ON S.B.264
BY LOIS JOHNSON, MCDONALD, KANSAS
MARCH 30, 1987

House Judiciary Committee:

Robert Wunsch, Chairman

My name is Lois Johnson, McDonald, Kansas. I was a member of the Alzheimer and Related Disease task force. I continue to do public speaking in Western Kansas on Alzheimer Disease.

I want to thank you for the opportunity to speak today in favor of S.B. 264.
This bill covers all long term care situations, but I want to speak on only one disease, Alzheimer Disease. My husband Tom was stricken with this disease five years ago at age 49. The life span for people with this disease is 3-15 yrs. The memory banks become so badly damaged with this disease that care at home can become almost impossible.

My husband has been in the long term care ward of the V.A. Medical Center for the last 21 months. We have been one of the fortunate ones to be accepted at the V.A. Once Tom is no longer an elopement problem we will be asked to move him to a private nursing home. At $2,000 a month my assets will only last 6 months. At that time we will both be applying for welfare help.

I spoke to this committee a year ago. Since that time a lot of time and effort have been spent on this bill. I feel it is a good bill and one that would be the most help for the middle income couples. This will help the elderly to continue to live in dignity and still have the sick spouse receive quality care

At this time lawyers across the state are advising their clients to divorce in order to divide their assets. Divorce is an added trauma to an already sad situation. With this bill Kansas will be able to offer their people something better than divorce or poverty.

I encourage your support on S.B.264.

Thank You.

Lois Johnson

Attachment V
House Judiciary 3/31/87

DIVISION OF ASSETS

I. Explanation

A. The Problem - Couples, man and wife, who have need of Medicaid assistance must, by regulation, dissipate their resources down to minimum level ($1700). This requirement effectively impoverishes the well spouse. This causes a total restructuring of the life style of the well spouse who is seriously demoralized as a consequence. The well spouse will become a welfare case for the rest of his/her life.

B. The federal regulations stipulate the level to which resources must be reduced to qualify for Medicaid. The state law requires each spouse to accept responsibility for the other.

C. Information derives from records of interim committees who have been involved with Medicaid entitlement. Testimony was given by: Registered nurse, social worker, legal services, Washburn law school, R.T.A., A.A.R.P., SRS.

D. The significance of the bill has been discussed with local legislators. Governors office and members of the interim committee should be contacted before and during the legislative session.

II. Population Affected

Elderly persons who have need of medical services whose life style will be adversely affected by the cost of such services are the persons primarily impacted. Members of the extended family of such ill persons are also affected.

III. The Intent of the Legislation

a. To protect the economic condition of the well spouse.
b. To protect the dignity of the couple.
c. To protect the public from the long term cost of care of the well spouse.
d. To defer - but not to deny - the interspousal obligation for support.- Subrogation provision.

IV. Estimated Cost

$1-2 million estimate stated in letter to Joyce Romero from Robert Harder 3/11/86.

$8,382,552 - half from state - ($4,191,276) estimate stated in letter form Gary Stott - Acting Director of the Budget to Hon. Robert Miller 3/29/86.

Other guesses cited later.

V. Legislative History

Recommendation for bill came from Kansas Alzheimer's and Related Diseases Task Force.

Introduced as H.B. 3053 in Kansas House in 1986. Assigned to Interim committee.

Attachment VI
House Judiciary 3/31/87

VI. Recommendations

A. Support economic protection of the well spouse.
$8600 per year income.
$25,000 per year ~~income~~. Resources

B. Remove Senate amendment which requires prior approval by the Department of Health and Human Services - an unnecessary delay.

VII. Comments

A. Monitor Federal Legislation
Proposals by Edward Royballs of Select Committee of Aging.
C.A.R.E.
U.S. Health
Kennedy - Durenburger bill for a National Health Plan.

B. Kansas is not tied rigidly to Federal support figures.

C. Cost estimates for S264 to be carefully examined. May be too high.
Savings to state in avoidance of impovershment of the well spouse.

Kansas Retired Teachers Association

Together We Can

1986-1987

ELECTIVE OFFICERS

President
Lucy E. Clark
425 Morningside Lane
Newton, Ks. 67114
Phone 316-283-2421

President Elect
Mr. Jimmie Nickel
965 Mentlick Dr.
Colby, Ks. 67701
Phone 913-462-2293

Vice President
Ruth M. Lyon
1040 No. 11th
Independence, Ks. 67301
Phone 316-331-2464

Secretary
Miss Esther Griswold
229 East 6th
Hutchinson, Ks. 67501
Phone 316-662-3608

Treasurer
Mr. Fred Jarvis
1122 N. Cedar
Abilene, Ks. 67410
Phone 913-263-1533

Assistant Treasurer
Mrs. Nadine Ramey
1216 N. Campbell
Abilene, Ks. 67410
Phone 913-263-3542

Chairman of Editing & Publishing Committee
Mrs. Elsie Klemp
608 E. Price
Garden City, Ks. 67846
Phone 316-275-5322

Legislative Chairman
Basil Covey
3119 W. 31st. Ct.
Topeka, Ks. 66614
Phone 913-272-5914

Past President
Morris J. Thompson
412 E. 13th
Hutchinson, Ks. 67501
Phone 316-662-3002

District 1
Mrs. Wilda Novotny
2310 Maple Drive
Belleville, Ks. 66935
Phone 913-527-2964

District 2
Mr. John McCoy
1150 Meadowbrook Lane
Manhattan, Ks. 66502
Phone 913-539-6343

District 3
Mr. Willis Jordan
933 Maple
Ottawa, Ks. 66067
Phone 913-242-6130

DISTRICT DIRECTORS

District 4
Russel Lupton
2008 Hart
Dodge City, Ks. 67801
Phone 316-227-3335

District 5
Mrs. Eunice E. Schnitzer
1711 N. 4th, Apt. 518
Arkansas City, Ks. 67005
Phone 316-442-2685

District 6
Margaret Hollenshead
504 S. Central
Chanute, Ks. 66720
Phone 316-431-1135

APPOINTIVE OFFICERS

Historian
Mrs. Alma Gall
2206 Sixth Ave.
Dodge City, Ks. 67801
Phone 316-227-7544

Community Participation Chair
Dr. Ralph Ruhlen
P.O. Box 269
Baldwin, Ks. 66006
Phone 913-594-3413

Necrology Chairman
Mrs. Thelma Childers
1209 S. Evergreen
Chanute, Ks. 66720
Phone 316-431-3882

Informative and Protective Serv
Mrs. Lois Marshall
912 Judson Street
Ft. Scott, Ks. 66701
Phone 316-223-2157

Retirement Planning Chairm
Mr. Milton Senti
708 Stout
Pratt, Ks. 67124
Phone 316-672-6183

Membership Chairman
Mrs. Ann Butler
524 N. Main
Hoisington, Ks. 67544
Phone 316-653-2922

NRTA Coordinator
Dr. George Goebel
711 Crest Dr.
Topeka, Ks. 66606
Phone 913-272-3418

Corresponding Secretary
Mrs. Pauline Meador
203 SW 12th
Newton, Ks. 67114
Phone 316-283-8491

Parliamentarian
Mr. Harold Lowe
4801 W. 66th Terrace
Shawnee Mission, Ks. 66208
Phone 913-432-0886

March 31, 1987

To Members of the House Judiciary Committee:

My name is Basil Covey and I represent the Kansas Retired Teachers Association.

We support SB 264 that divides assets or resources of spouses' caught in a long-term illness situation.

There is statewide support for SB 264. In KRTA district meetings held in Ford, Wichita, Manhattan, Iola, Ottawa and Salina retired teachers expressed a need for this legislation.

Several tragedies were reported in an interim study last summer as well as in hearings held in the Senate Public Health Committee. Surveys show that a couple's assets are used up in about four months when one spouse has a long term illness.

Three states, California, Illinois and Colorade have division of asset legislation. The Committee may know the details of these states' laws.

Retired and elderly citizens should be allowed to handle their assets so in case of catastrophic illness of one spouse both will not be on Medicaid.

We urge your support for SB 264.

Sincerely,

Basil Covey

Basil Covey
Chairman, KRTA
Legislative Committee

Attachment VII
House Judiciary
3/31/87

KINH Kansans for Improvement of Nursing Homes, Inc.

913 Tennessee, suite 2 Lawrence, Kansas 66044 (913) 842 3088

TESTIMONY PRESENTED TO
THE HOUSE JUDICIARY COMMITTEE
CONCERNING SB 264
DIVISION OF ASSETS

March 31, 1987

Mr. Chairman and Members of the Committee:

Kansans for Improvement of Nursing Homes believes there is broad agreement among Kansans that it is neither humane nor, in the long run, to the state's advantage to impoverish the spouse of a person needing extensive care, either in the home or in a nursing home setting, in order to pay for that care.

The Alzheimer's Task Force, reporting their findings and recommendations to the 1986 Legislature, opened the discussion with a recommendation that a division of assets law be enacted. This past summer the 5052 Committee, established by legislative resolution to develop and recommend a comprehensive long term care plan for the state, has recommended that Kansas "Reduce the possibility that private pay nursing home clients spending jointly held resources to pay for nursing home care will leave a healthy spouse without resources to remain independent." And, to that end, the committee recommended that the state enact a division of assets law.

These two bodies, the Alzheimer's Task Force and the 5052 Committee, represent a wide range of Kansans -- consumers, providers and academicians. To their findings KINH would add the agreement of its nearly 900 members, many of whom have had close contact with the kinds of problems addressed. The question in their minds is not so much whether Kansas should adopt a division of assets policy as it is how the state can achieve those goals in the most equitable manner, what it will cost, and how we shall pay for it.

The bill before this committee is the result of extensive deliberation by the Special Committee on Judiciary. It provides a significant step toward an equitable process. Specifically, we support the following concepts:

1. Use of home care services as well as nursing home care to trigger division of assets provisions. KINH believes that there is widespread agreement that it is desirable to maintain disabled persons in their own homes as long as possible and that it is in the state's best interest to assist in doing so.
2. Protection of $25,000 in resources as well as $8,600 protected income.

3. Recovery by the state of state expenditures to whatever extent possible from the estate of the recipient's spouse.

4. Notice of the specific provisions of the law to be furnished to the medicaid applicant and spouse.

Even in a time of extrordinary fiscal restraint in Kansas, KINH believes this legislation merits your full support. We urge you to report SB 264 favorably.

Kansans for Improvement of Nursing Homes
Marilyn Bradt
Legislative Coordinator

KANSAS COALIITON ON AGING
TESTIMONY IN SUPPORT OF SB 264
JUDICIARY COMMITTEE
MARCH 31, 1987

My name is Mark Intermill. I am the Director of the Kansas Coalition on Aging. The Kansas Coalition on Aging is a coalition of thirty organizations and a number of individuals who have an interest in the status of older Kansans.

We support SB 264. We believe that the public policy issue addresssed by SB 264 is one of intense interest to many older Kansans. I am sure that the committee has heard or will hear testimony which chronicles the hardship posed by our current policy. You have also probably heard that the current policy, in effect, has forced people to make a choice between impoverishment and divorce. But those issues are, in my opinion, worth repeating. They are the basis for our support of this bill.

We recognize the concerns about the estimated cost of this proposal. It is estimated that, due to the expansion in the number of persons eligible for Medicaid payment of nursing home care, that there will be an additional $2,000,000 in Medicaid expenditures when this legislation is implemented. Approximately one-half of that cost will be borne by the state. As I understand it, this estimate simply includes the additional cost of nursing home care provided to persons who would become eligible for Medicaid as a result of this proposal. Not included in the estimate is an evaluation of how much money the state would recover through the imposition of a lien for medical assistance paid, as provided for in Section 2 of SB 264. Nor does the estimate include savings realized by avoiding the cost of providing health care to the well spouse who has become eligible for Medicaid when the institutionalized spouse does. At the point at which the couple's resources are expended, two people become eligible for Medicaid.

It is conceivable that, in the long run, this legislation would be less costly than it has been estimated to be. The amendments adopted by the Senate, which requires HCFA approval prior to implementation, will prevent the possibility of the state, at a later date, being placed in a position of having to pay back funds expended on the program. We feel that this conservative approach to the issue is advisable at the present time, and will probably mean that no additional costs to the state will be incurred in the near future.

In the past few months I have become aware of the significant number of people who are affected by this issue. At issue forums that KCOA conducts across the state, at

senior centers and at gatherings of my relatives in the state, I am finding a growing concern with the issue of spousal impoverishment to pay for nursing home care. We believe that the income and resource limits proposed under this bill are fair. We believe that the inclusion of a lien provision is appropriate, and is consistent with the intent of the legislation. Most importantly, this bill will rectify a situation that should be corrected as soon as possible. The Kansas Coalition on Aging urges the Judiciary Committee to recommend this bill favorably and to expedite its passage during this session of the legislature. Thank you for the opportunity to speak to you on this issue.