

Approved 3-1-88
Date

MINUTES OF THE SENATE COMMITTEE ON PUBLIC HEALTH AND WELFARE

The meeting was called to order by SENATOR ROY M. EHRLICH at
Chairperson

10:00 a.m./~~p.m.~~ on February 22, 1988, ~~19~~ in room 526-S of the Capitol.

All members were present except:

Committee staff present:

Emalene Correll, Legislative Research
Norman Furse, Revisors Office
Clarene Wilms, Committee Secretary

Conferees appearing before the committee:

John Schneider, Commissioner, Division of Income Maintenance and Medical Services, SRS

Chairman Ehrlich called the meeting to order and stated the committee was open to requests for bills. No requests were presented.

Chairman Ehrlich placed SB-593 before the committee stating that at the present time certain Emergency Medical Technicians are not covered under the Good Samaritan law. Staff stated that SB-593 would provide relief from medical liability and would include all levels of Emergency Medical attendants.

Senator Hayden moved that SB-593 be passed out favorable for passage. Senator Morris seconded the motion and the motion carried.

John Schneider, Commissioner, SRS, appeared before the committee concerning SB-622. Mr. Schneider stated that SB-622 paralleled SB-264, the Division of Assets Bill except it concerns dependent children who would be left behind when the sole parent would go to the nursing home. Concerns expressed by Mr. Schneider were 1) the question of legal ramifications when those involved are minor children; 2) there is no authority to file a lien against property in the statutes but this is permitted in the bill; 3) a minor has no legal authority to sign written agreements and contracts. Commissioner Schneider stated that the department supported SB-622 but a number of legal difficulties appear in the present form. Further details of these legal difficulties are alluded to in the written testimony. Attachment 1

Considerable discussion followed with agreement that the concept was good but concerns were expressed over the various legal ramifications. Chairman Ehrlich requested that Commissioner Schneider and his staff look at the bill and determine what changes need to be considered.

The chairman once again called for any bill requests and none were presented. The meeting adjourned at 10:40 a.m. The committee will meet at 10:00 a.m. February 23, 1988 in room 526-S.

SENATE
PUBLIC HEALTH AND WELFARE COMMITTEE

DATE February 22, 1988

(PLEASE PRINT)
NAME AND ADDRESS

ORGANIZATION

John Grace

Ks Homes For Aging

John Schneider

Ks Dept of SRS

Don Priest

SRS

Michael Wolf

KTLA

Betty Wright

Girl Scouts

Ann Davis

Girl Scouts KC Ks

Sharon Pierson

Girl Scouts

Wanda Davis

girl scouts

Ann Martin

Girl Scouts

Beverly Wilson

Girl Scouts

Marcia Bailey

Girl Scouts

DICK HUMMEL

Ks HEALTH CARE ASSN

Carol J Smith

KDOA

M. Hance

Tapeia Capital - Journals

KOTH R LANDIS

CHRISTIAN SCIENCE COMMITTEE
ON PUBLICATION FOR KANSAS

Marilyn Bratt

KINH

Carl Schmitt Heuser Jr.

Ks. Dental Assoc

STATE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

Testimony Regarding S.B. 622

I am appearing today in regards to the proposed legislation contained in Senate Bill No. 622.

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 dependent children into separate shares. Only the separate resources and income retained by the applicant/recipient would then be considered in determining his or her eligibility for medical assistance. A dependent child is defined as one who is under age 18 or under age 19 and a full time student who is expected to complete his or her schooling prior to turning 19. The applicant/recipient must also have the sole responsibility for supporting the child.

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 those children whose sole supporting parent must enter a nursing home for long term care. It provides financial protection for the children who remain in the community, particularly in light of the fact that the parent usually owns most of the family resources and receives most, if not all, of the income available to the children. It also recognizes the fact that the parent in long term care may have support obligations toward his or her children emanating from a divorce or separation.

The Department is supportive of the bill and believes its fiscal impact would not be significant. As directed in section 4 of the bill, the Department would also take any necessary action to try to reverse a negative federal finding if the bill's provisions are found to be in conflict with federal statutes.

We do wish to raise one primary concern regarding the bill's provisions on the responsibilities of the child. As most of the children impacted by the bill will be minors, there is a question as to the legal ramifications of certain provisions. First, the Department is authorized in section 3 to recover monies from the children to support their parent when their income is in excess of the stated limits. There does not appear to be any existing statutory authority which would permit the Department to do so. Minor children do not currently have any legal responsibility to support their parents.

Secondly, the Department is also permitted in section 2 to file a lien against the property of the applicant/recipient's children for purposes of recovering medical assistance. There is no authority to do so under the provisions of 42 U.S.C. 1396p as specified in the bill.

Testimony Regarding S.B. 622

Thirdly, the bill requires in sections 2 and 3 that a written agreement between the applicant/recipient and his or her children be signed by both parties to carry out the resource and income divisions. As a minor has no legal authority to enter into such a contract, it is uncertain as to whether the agreement would be meaningful. In addition, the minor will generally have no legal access to the aggregate resources or income so that the division will have to be carried out solely by the applicant/recipient or his or her personal representative.

Finally, under section 5 of the bill, if the applicant/recipient is unable to give consent to the division because of disability, the children are required to seek a court order of support or conservatorship. Once again, it is unlikely that a minor can obtain such authority.

Because of these legal questions, the bill's provisions need to be reviewed by legal counsel and potentially modified as to the minor child's responsibilities.

Aside from this primary concern, the Department wishes to raise two other less substantive issues. First, in both sections 2(a)(1) and 3(a)(1), provisions are made for the children's income and resources to be considered in determining the eligibility of the applicant or recipient. Current Medicaid provisions do not permit considering the income and resources of a minor child to be available to his or her parent. Therefore, those sections should be deleted from the bill.

Secondly, the bill is not clear as to whether the \$12,000 asset and \$9,000 income levels apply to each child or to all of the applicant/recipient's children as a whole. Further clarification of this issue is requested.

In summary, the Department supports S.B. 622 but notes the legal issues raised earlier.

John Schneider, Commissioner
Division of Income Maintenance
and Medical Services
Social and Rehabilitation Services

(913) 296-6750

February 22, 1988

SUMMARY OF S.B. 622

Senate Bill No. 622 permits an applicant or recipient of medical assistance who enters an institution for long term care or begins receiving home-and-community-based services (HCBS) to divide the aggregate resources and income of the applicant/recipient and his or her dependent children into separate shares. By doing so, only the separate resources and income retained by the applicant/recipient will then be considered for eligibility purposes.

A dependent child is defined as one who is under the age of 18 or who is under the age of 19 and a full time student who is expected to complete his or her schooling prior to turning 19. The applicant/recipient must also have the sole responsibility for support of the child(ren).

Two written agreements between the parent and children are required; one to divide their resources and one to divide their income. Both the parent and children 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 or where the applicant/recipient is unable to give the necessary consent because of disability.

In regards to division of resources, the children are to receive the first \$12,000 of the aggregate resources. If the aggregate amount exceeds \$24,000, the child would receive a 1/2 share not to exceed \$48,000.

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 children's resources. The Department may, however, establish, enforce, and foreclose liens on the real property of the recipient and his or her children for purposes of later recovery.

In regards to division of income, the children are allowed to receive a minimum of \$9,000/yr. of the aggregate income of the applicant/recipient and children. This amount can be further increased to a maximum of \$14,400/yr. if the children have excess shelter expenses. The children would have no duty to provide future medical support to the applicant/recipient if their share of the income after the division is less than \$9,000/yr. However, if their share is more than this amount (or the established higher amount based on excess shelter costs), the Department would be given the authority to recover medical expenses paid out to the applicant/recipient from the amount of excess income.

The income and asset limits described above are to be adjusted annually based on the amount of increase in the consumer price index.

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 publication.