

Approved 2-7-89
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 January 23, 1989 in room 526-S of the Capitol.

All members were present except:

Committee staff present:

Bill Wolff, Legislative Research
Norman Furse, Revisors Office
Clarene Wilms, Committee Secretary

Conferees appearing before the committee:

John W. Alquest, Commissioner of Income Maintenance and Medical Services,
SRS
Secretary Esther Wolf, Department on Aging
Winston Barton, Secretary, Social and Rehabilitation Services

John W. Alquest, SRS, appeared before the committee concerning SB-15. Mr. Alquest told the committee that the federal division of resources law is, on the whole more liberal than Kansas law and may result in an increase in eligible clients over the next few years. The provisions especially allow for greater protection of the community spouse in terms of income and resources. (Attachment 1) Due to preeminence SRS needs to adopt the federal provisions contained within the Medicare Catastrophic bill or face the threat of loss of federal Medicaid dollars. These provisions differ from those which currently exist in State law and some type of legislative action is needed to resolve the differences. Commissioner Alquest stated he was not certain that SB-15 in its present form was the answer in resolving the differences. Mr. Alquest further stated that following discussions internally and with the Department on Aging, SRS was recommending these two departments plus a representative from the Revisor's office work to provide some modification which would allow SRS to implement federal catastrophic legislation but would not repeal state law but keep it place in the event something would go wrong with the federal law. The transfer of property issue is separate and must be addressed to allow the Department to comply with the new federal provision. A bill is currently being drafted dealing only with the transfer of property.

Secretary Wolf spoke briefly to the committee and stated her department did concur with SRS in the need to preserve the Kansas statutes in the event something would occur to change federal law.

The Secretary of SRS, Winston Barton stated he was in agreement and concurred with the need to retain, in some form, the Kansas division of assets laws.

It was the concensus of the committee that the major thrust of the Kansas Division of Assets Bill should be retained.

A sub-committee chaired by Senator Langworthy with Senator Strick, Norman Furse, John Alquest, SRS and Esther Wolf, Secretary from the Department on Aging will work together to provide input for legislation which would remain in effect should the federal law cease to be in force.

The meeting adjourned at 10:30 a.m. and will meet January 24, 1989, at 10:00 a.m. in room 526-S.

SENATE
PUBLIC HEALTH AND WELFARE COMMITTEE

DATE January 23, 1989

(PLEASE PRINT)
NAME AND ADDRESS

ORGANIZATION

Esther Woy Sec.

EDOA

Mark Intermill

Kansas Coalition on Aging

Marilyn Bradt

WINH

Ruth Wilbur

G.S.C.

Basil Covey

KIRTA

Anne Smith

Hein + Ebert - KAMFT

Jim M-Bauer

observer

GARY Robbins

Ks Opt 955V

DON LINDSEY

UTU

Jo Spangler

KDHE

Beta Kay Ryan

KDHE

Elizabeth C. Taylor

Ks Fed. of Lic. Pract. Nurses

Bob Corkins

Kan. Hospital Ass'n.

C. L. Tipton

Sr. Citizen

Mike O'Neil

KALHA

Mike Lechner

U

Claire McMurphy

Ks Dept on Aging

Wanda Banta

SRS

Janita Carlson

law clerk for Don Stordal, Physicians assistants

Department of Social and Rehabilitation Services

Winston Barton - Secretary

Statement regarding: Senate Bill No. 15

Title: An act relating to public assistance; relating to determination of persons eligible for assistance.

Purpose: The bill primarily accomplishes 2 purposes. First, it repeals the State's division of assets law effective September 30, 1989 based on implementation of similar federal provisions which were included in the Medicare Catastrophic Coverage Act of 1988. Second, it repeals sections of state statute regarding transfer of property in the public and medical assistance programs as specific federal transfer provisions were written into Medicaid law also as a result of the Medicare Catastrophic Coverage Act of 1988.

Background: In regards to the division of assets provisions within the bill, a federal division of assets policy was contained within the Medicare Catastrophic Coverage Act of 1988. This policy for the most part parallels the State's division of assets law which took effect on May 1, 1988. The primary differences between the state and federal law are in regards to the division limits and rights of the recipient and include the following:

1. A higher resource division limit is contained in the federal law (\$60,000 maximum vs. \$48,000 maximum under State law). In addition, under the federal law, the \$12,000 minimum division level can be increased up to \$60,000.
2. A higher income division limit is contained in the federal law (122% of the federal poverty level for 1989 or \$786/month vs. \$750/month under State law). In addition, the federal law raises the income limit to 133% of poverty on July 1, 1991 and to 150% of poverty on July 1, 1992.
3. A higher income division cap is contained in the federal law (\$1500/month maximum vs. \$1200/month maximum under State law).
4. An additional income allowance is provided under federal law for other dependents, including children, who live with the community spouse (the State law has no such provision).
5. A fair hearing process is established under federal law if either spouse is dissatisfied with the resource or income division determination (not clear under State law).
6. There is no requirement for notices of intent or interspousal agreements to divide under the federal law (State law mandates these).

The remaining provisions of the federal and state laws are similar in nature.

As the federal law takes effect on October 1, 1989 and States are mandated to adopt its provisions, Senate Bill No. 15 seeks to repeal the State's current division law and amend certain cross-references to the State law contained in

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Attachment 1

other sections of the statute. The bill also allows for this repeal to be rescinded automatically if the federal provisions do not take effect in accordance with the Medicare legislation.

In regards to the transfer of property provisions within the bill, the Medicare Catastrophic Coverage Act made several fundamental changes in the Medicaid transfer policy which resulted in the need to modify state statute in this area. The transfer policy allows for a period of ineligibility if an individual disposes of a resource for less than fair market value. Those changes include:

1. Application of the transfer provisions only to persons who are receiving long term institutional care or home-and community based services (HCBS). Thus, if a person who is living independently gives away all of his or her resources, a penalty would no longer be applied unless he or she were to go into long term care within the 30 month period described below.

Current state statute would apply a penalty regardless of the person's living arrangement.

2. A set 30 month time period in which transfers can affect eligibility. Persons who dispose of resources for less than fair market value in a 30 month period before or after the date they enter long term care can be penalized for up to 30 months.

Current state statute looks at and penalizes such transfers up to 24 months from the date of transfer if the transfer was for less than \$12,000 and, based on state regulation, up to 5 years if the transfer was for \$12,000 or more.

3. Permits only transfers of the home to a spouse or to certain children or siblings of the recipient and transfers to the community spouse under the federal division of assets law without penalty.

Current state regulations would permit transfers of all exempted resources (including the home) without penalty regardless of who they are transferred to as well as transfers under the State division of assets law.

Senate Bill No. 15 deletes from statute all provisions regarding transfer of property effective July 1, 1989 as the federal law is mandatory and will supersede State law for Medicaid purposes. In addition, the bill eliminates state transfer provisions for the cash assistance as well as the medical assistance programs. Thus, although transfers occurring in regards to Medicaid eligibility will be reviewed under the above federal policy, they will no longer affect eligibility in the cash programs.

This additional change was done based on the Department's recommendation that the transfer policy be applied only to the Medicaid program and no longer to either the Aid to Families With Dependent Children (AFDC) or the General Assistance (GA) program. There were several reasons for making this change. First, with the new federal requirements in the Medicaid program, the Department would be faced with implementing 2 separate and conflicting transfer provisions

in its cash and medical programs. Second, the transfer policy in the AFDC and GA programs is an optional one and is not mandated under federal law. Third, and most important, the transfer policy is rarely applied in the cash programs as most cash eligible clients do not have any substantive resources to transfer to begin with. Most transfers which occur and may be subject to penalty are those done to qualify for medical assistance, particularly long term care.

Effect of Passage: The provisions regarding division of assets and permitting the federal law to pre-empt the state law will be beneficial to clients. The federal provisions are felt to be more liberal on the whole and may result in an increase in eligible clients over the next few years. The provisions especially allow for greater protection of the community spouse both in terms of income and resources.

The new federal provisions will affect the agency in several ways. Policies and procedures will need to be altered and field staff trained on the differences. Other administrative changes will also need to be made in terms of regulations, outreach materials, federal reporting, state plan amendments, forms, etc. Expenditures are not expected to substantially increase for FY 1990 but will probably increase in future fiscal years especially as the higher income levels under the federal law take effect. There will also be a need for additional staff.

Community agencies and other state departments, particularly the Department on Aging, will be impacted as well. The new policies and procedures will need to be analyzed and reviewed and outreach efforts and materials will need to be revised to reflect the new guidelines. Both SRS and the Department on Aging will need to work together on a coordinated strategy to convey to the public why this action is being taken and the benefits of the federal law.

In regards to the transfer of property provisions, a small number of cash assistance clients may be benefited by the elimination of transfer penalties. From the Medicaid side, certain clients may be benefited by the elimination of transfer penalties for persons who remain in independent living. Those who need long term care may also be benefited by the shortened look back and penalty period of 30 months (vs. up to 5 years under current State policy). Others may be disadvantaged by the more restrictive policy on what resources may be transferred without penalty.

From the Department's standpoint, the new federal law will somewhat simplify current transfer policy because of its limited application and consolidation of the penalty periods. Policies and procedures will need to be revised and field staff retrained. As with the division of assets impact, other administrative changes will be necessary. The fiscal impact should not be substantive. As earlier described, few transfer penalties have been applied in the cash programs so that elimination of this policy should result in only a minimal increase in expenditures. The same is felt to be true regarding the federal changes on the Medicaid side. Although the period of ineligibility is capped at 30 months and applies only to persons in long term care settings, most transfer penalties which occur under present State law are within this period of time and most of the transfers generally take place as a result of placement into long term care.

Recommendations: In regards to the portions of the bill dealing with the repeal of the State's division of assets law, the Department recognizes the concerns this proposal has created with the groups and individuals who helped to create as well as support the current State law. The Department will need to adopt the federal provisions contained within the Medicare Catastrophic bill or face the threat of the loss of federal Medicaid dollars. As these provisions differ from those which currently exist in State law, some type of legislative action will need to be taken to resolve the differences. We would recommend a further review of available legislative options which could achieve the same results as S.B. 15 before a final decision in this matter is made.

In regards to the portions of the bill dealing with transfer of property, the Department does support the action being taken. This action is needed to allow the Department to comply with the new federal provision which is already in effect. However, in conjunction with the Revisor of Statutes, a bill is currently being drafted dealing only with the transfer of property issue and should that be introduced, the Department would support it as a separate proposal.

John W. Alquest
Commissioner, Income Maintenance
and Medical Services
296-6750

DIVISION OF ASSETS

FACT SHEET

Following is a list of statistics compiled from all Notices of Intent to Divide Income and Notices of Intent to Divide Resources, received by SRS Legal Division from May 1, 1988 to January 17, 1989.

Total Number of Notices Received.425
Division of Income only250
Division of Resources only.63
Division of Income and Resources.112
Date Division Effective: 5/88	123	11/88	18
6/88	66	12/88	21
7/88	50	01/89	4
8-88	39	N/A:	33
9-88	37		
10-88	34		
Number of clients already receiving nursing home care334
Number of clients not currently receiving nursing home care91
Number of recipients transferring all monthly income to spouse.67
Number of recipients transferring all but \$25.00 (or \$30.00) to spouse24
Average Income Allocated by Client to Spouse.			\$.412.15
Average Percentage of Income allocated by client to spouse.65.51%
Less than \$100 allocated to well spouse16
\$100 to \$200.45
\$200 to \$300.59
\$300 to \$400.54
\$400 to \$500.103
\$500 to \$600.46
\$600 to \$700.20
\$700 to \$800.13
\$800 to \$900.4
\$900 or more.2