Approved 2-14-91
Date

MINUTES OF THE House COMMITTEE ON Judiciary.

The meeting was called to order by Representative John M. Solbach at
Chairperson

3:30 axx/p.m. on January 30, 1991 in room 313-S of the Capitol.

All members were present except:
Representatives Douville and Gomez who were excused

Committee staff present:
Jerry Donaldson, Legislative Research Department
Jill Wolters, Office of Revisor of Statutes
Gloria Leonhard, Secretary to the Committee

Conferees appearing before the committee:
Jack Phillips, President of Ks. Child Support Enforcement Assn.
Jamie Corkhill, SRS
Keith Kentch

The Chairman called the meeting to order.

The Revisor's Staff noted provision of HB 2007 that calls for the Court to order medical support of a child when it is ordering child support.

Jack Phillips, President of the Kansas Child Support Enforcement Association, appeared in support of HB 2007. Mr. Phillips distributed written testimony (Attachment # 1).

Committee discussion followed.

The language "shall require" on Page 1, Line 40, of the bill was questioned.

Mr. Phillips said the bill is not attempting to alter or meddle with Supreme Court guidelines but to be compatible with them.

A committee member asked if the intent is to encourage the orders rather than to mandate them. Mr. Phillips said his prejudice is to encourage them. The suggestion was made to use "may" instead of "shall" in Line 40. A committee member questioned how AFDC payments and medicaid insurance payments will work with the proposed legislation.

The intent of Line 43, Page 1 and Lines 1 and 2, Page 2, was discussed. Mr. Phillips said the bill will help prevent violation of orders to provide health insurance.

A committee member asked if in certain cases SRS attorneys should be allowed to come in as a third party and require that coverage be provided, since the proposal could save the State money.

A committee member asked if there are statistics for coverage cost on intact families vs non-intact families and what happens in families already carrying a family insurance plan at the time of divorce.

The definition of "caretaker" was requested. Mr. Phillips said this is usually a relative. It was noted that a judge has at his discretion now whether or not to require medical insurance and what if the family cannot afford the insurance.

A question was raised about what happens when the non-custodial parent stays in the area but the custodial parent and child move to another state and the insurance company will not pay in the new state; also what happens in the case of non-married couples who ultimately split. Mr. Phillips said the bill is not limited to marital relationships but would apply to any situation where the court would have jurisdiction on the issue of child support.

A committee member noted that some of the provisions of the legislation might be as appropriate as a mandate of the insurance commission as a mandate on the insurance carrier. Mr. Phillips said that other states have passed legislation comparable to HB 2007.

Jamie Corkhill, SRS, appeared in support of HB 2007, and distributed written testimony (Attachment # 2). Ms. Corkhill pointed out the State of Iowa has adopted similar legislation which has assisted greatly in meeting federal requirements. A committee member asked if there might be a way to establish and maintain the award by the judge (a compliance issue) without losing federal dollars and without having an across-the-board mandate. Mr. Corkhill said the estimate of 1.5 million dollars savings per year is conservative.

Keith Kentch, a private citizen and Board Member of KCSEA, appeared as an opponent of HB 2007 see (Attachment # 3).

The Chairman introduced House Judiciary Intern, Amy Buchel Ash to the committee.

The Chairman called for committee discussion on HB 2006.

Represenative Vancrum made a conceptual motion to provide an alternative on Page 1, Line 23, to the Court Trustee Operations Fund in the County Treasury of each county by adding the language "or district court of each county". Representative Parkinson seconded the motion. Discussion followed.

The Chairman asked if the intent of the motion is to allow the County Commission to determine the fund.

Representative Vancrum amended, with the consent of the second, his conceptual motion to insert the language in Line 24. The county commissioners of each judicial district shall determine the type of fund. The motion carried as amended.

The Chairman asked if the committee wished to take action on the amendments proposed in balloons furnished by conferees on January 29, 1991.

Representative Sebelius made a motion that the changes on Page 1, Line 36 of the balloon bill submitted by the Shawnee County District Court Trustee be adopted. Representative Hamilton seconded the motion. The motion carried.

MINUTES OF THE House COMMITTEE ON Judiciary,

room 313-S, Statehouse, at 3:30 ~~a.m.~~/p.m. on January 30, 1991.

Representative Parkinson made a motion to strike part of Line 37 and all of Line 38 through 40 on Page 1 of the proposed bill. Discussion followed. Representative Carmody seconded the motion. The motion carried.

Representative Everhart made a motion to accept the language set out in Mr. Vopat's balloon bill on Page 2, Line 4. Representative O'Neal seconded the motion. The motion carried.

Representative O'Neal made a conceptual motion that the amendment in New Section 3 Line 15 be adopted. Representative Everhart seconded the motion. Discussion followed.
Representative O'Neal, with the consent of his second, amended his original conceptual motion to make the word "proportionately" on Page 2, Lines 6 and 11, refer to the amount of child support collected in each county as opposed to population. The motion carried.

Representative Everhart made a motion to amend Page 2, Line 20 by taking out the word "obligor" and inserting the word "obligee". Representative Sebelius seconded the motion. Discussion followed.

Representative Hochhauser made a substitute motion to change the language on Page 2 Line 20 to "either/or". Representative Gregory seconded the motion. The motion carried.

Representative Macy made a motion to strike all language, starting after the word "factors", on Page 2, Lines 26 through 39. Representative Carmody seconded the motion. The motion carried.

Representative Rock made a conceptual motion to make the legislation effective as of the first of each year after the effective date of the bill and that a special review in accounting not be required until the effective date of the act.
Representative Carmody made a substitute motion to make the effective date January 1, 1992.
Representative Rock seconded Representative Carmody's substitute motion. The motion carried.

Representative Allen made a motion that on Page 2, Line 1, the words "or administrative judge" be inserted. It was noted that this had been accomplished by a prior motion. The motion died for lack of a second.

Representative Sebelius made a motion that HB 2006, as amended, be passed. Representative Lawrence seconded the motion. The motion carried.

The meeting adjourned at 5:20 PM. The next meeting of the committee is scheduled for Thursday, January 31, 1991, at 3:30 p.m. in room 313-S.

GUEST LIST

COMMITTEE: JUDICIARY (HOUSE) DATE: 1/30/91

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Jamie Corkhill	Topeka	SRS (CSE)
KEITH LAWRIS	TOPEKA	CHRISTIAN SCIENCE COMMITTEE ON PUBLICATION FOR KANSAS
Ray Farley	Topeka	OJA
Jack Phillips	Leawood	Kansas Child Support Enforcement Association
Michelle Moore	Topeka	[illegible] Action for Children

TESTIMONY OF JACK PHILLIPS
PRESIDENT OF THE KANSAS CHILD SUPPORT ENFORCEMENT ASSOCIATION
Kansas Medical Support Act--HB 2007

The Kansas Child Support Enforcement Association is a non-profit Kansas corporation affiliated with the National Child Support Enforcement Association and the Kansas Children's Coalition. Its membership includes a large number of people who work in child support enforcement. Many are employees of the Department of Social and Rehabilitation Services. We also have District Judges, District Court Trustees, County and District Attorneys, Clerks of District Court and personnel from the Office of Judicial Administration. The board of directors includes representatives from a broad cross-section of viewpoints and experience: divorced parents, business people, child advocates, and representatives from education and government.

The Association publishes a quarterly newsletter and holds an annual statewide conference. Our most recent conference was held July 1990 at Lawrence, Kansas. Our next one will be held July 19th and 20th, 1991 at Manhattan, Kansas.

HB 2007 will improve medical support enforcement. It provides stronger "teeth" and reliability for court orders. It will help control public and private medical costs. Savings, including cost avoidance, could be substantial. The bill treats the subject in a balanced and comprehensive manner. It addresses the interests of parents and children of divided families, health benefit plans, health care providers, support enforcement agencies, medical public assistance agencies, and the judiciary.

HJUD
1/30/91
Attachment 1

This bill does not require health benefit coverage in all cases. Under the terms of the bill, a health benefit program would not be required unless ". . . . one is available at reasonable cost or upon terms which are cost beneficial". When health benefit coverage is not available, the court's order would follow existing practices to designate how the child's medical expenses will be shared.

To comply with an order for health benefit coverage, a parent must provide benefits which are meaningful and accessible to the child. Joining a distant HMO is not helpful and should be discouraged. Such coverage would be a sham unless the distant HMO agrees to provide or reimburse local benefits and to do so without discrimination based upon the child's residence.

The manner of paying claims needs to be carefully directed. To avoid opportunities for abuse, payments should be directed to the health care provider or medicaid agency rather than the policyholder.

The requirement to maintain coverage must apply to the employer or union or insurance carrier as well as the obligor. We must have a reliable system which will confirm compliance with the court's order.

The obligee and court must receive notice from the benefit plan prior to termination of coverage. This is necessary to avoid surprises and to provide an opportunity to make alternative arrangements, for example to (1) extend existing coverage, if possible, or (2) obtain new coverage, or (3) raise the issue in court for other appropriate relief.

The obligee or support enforcement agency should have the right to cure a default for non-payment of premium and add the cost to the obligor's arrearages.

If coverage stops, there should be automatic, immediate adjustment of child support so as to avoid giving credit for premiums which are no longer being paid.

The bill draws upon examples from other states, especially Minnesota, Connecticut, New York and Hawaii.

The following is from the Johnson County Barletter August 1990.

Medical support[1] is the aspect of child support having to do with medical care.[2] For divided families, (those split by divorce or other circumstances), medical support usually means the obligation of the non-custodial[3] parent to maintain coverage for the children under a health care benefit program[4], or to stand liable for their health care expenses.[5] Courts can impose such duties with a stroke of the judicial pen-- but enforcing them effectively is a different matter. There are few safeguards to prevent gaps in coverage, except for the relatively narrow circumstances and brief periods of time covered by the federal laws known as COBRA benefits.

The availability of health coverage is an important national problem.[6] Without private coverage, the only safety net is Medicaid,[7] the largest category of public assistance. The legislative history of COBRA shows an attempt to address these problems: "The committee is concerned with reports of the growing number of Americans without any health insurance coverage and the decreasing willingness of our Nation's hospitals to provide care to those who cannot afford to pay. Since 1977, the number of Americans without any health insurance coverage has increased by forty percent . . ."[8]

Medical support is receiving increased emphasis from the

federal department of Health and Human Services. Federal regulations require child support enforcement agencies[9] to establish and enforce medical support orders whenever possible under state law.[10] Although helpful, the new regulations are not sufficient to solve the underlying problems of gaps in coverage.

Medical support is familiar to the legal system as a standard component of support orders and related settlement agreements. The usual terms are good but they are far from perfect. Except for those situations and periods of time covered by COBRA benefits, there is no reliable mechanism to confirm ongoing compliance, obtain advance notice of problems or prevent lapses in coverage. Without such capabilities, the system must rely upon the self interest and voluntary compliance of those involved.

For rational persons of economic means, the incentive of self interest is a sufficient motivation to maintain health coverage. Good jobs have good benefits and there is strong demand for health benefit programs-- with or without a court order. Among those who can afford it, few would abandon medical coverage to save a few extra dollars per month. For those under economic strain or whose behavior may vary from what is sensible and constructive, the usual incentives are not enough. Strong measures are needed-- consistent with the social judgment that child support, like taxes, should have priority over routine bills.

Once uninsured losses occur, it is difficult, sometimes impossible, to rectify the situation. If the injury or illness is serious, the child-victim may be uninsurable for life. Future health plans will regard any continuing problem as a "pre-existing

condition" which will be exempted from coverage.

The situation is potentially dangerous whenever obligees have no coverage of their own and must rely upon another party's obedience to a court order. The obligor may simply neglect to get coverage in the first place. Typically, no action is taken to independently confirm compliance. The resulting lack of benefits might not be discovered for a long time. Without confirmation from the benefit plan, there is no real proof that meaningful coverage exists. Region-specific health care providers, like HMOs,[11] have little or no value to beneficiaries who live in a different location. Reasonable coverage limits and deductibles are also important.

Even if reasonable and adequate coverage is obtained, the obligor may later default on it, change it, cancel it, or lose it because of unemployment, a change of jobs or other reasons, (including, for example, voluntary cancellation or cancellation for non-payment of premium). In any such case, the lapse or reduction of benefits could easily remain a secret until a claim arises.

When claims arise and it comes to light that coverage has been lost or reduced, the obligee may attempt to hold the obligor liable for uninsured medical expenses, but the process of enforcing such claims can be expensive, slow and uncertain.[12] The obligee may give up without a serious effort. The cost of engaging legal counsel can be a formidable barrier. Even though the court has previously ordered medical support and health insurance coverage, it is not automatic that the obligor will be held personally liable for uninsured medical expenses. The obligee will receive the bill, and may be required to pay it before seeking reimbursement.[13] The claim

against the obligor is secondary. By way of defense, the obligor may question the necessity of the medical treatment, the reasonableness of its cost and whether or not it was competently provided.

Outside COBRA, group health plans have no present requirement that both households of a divided family be kept informed of the status of coverage in a way that would allow a meaningful opportunity to take corrective action or prepare for the consequences, (for example, by providing both households with summaries of the plan and advance notice of a loss or reduction of coverage).

Private health benefit programs for children of divided families should be obtained and kept in force whenever available at reasonable cost.[14] or upon terms which are cost beneficial. Without a protective legal safety net, the enforcement of medical support obligations must rely upon the voluntary compliance of the individuals involved. This is unacceptably dangerous. Health coverage should not be left to the capriciousness of voluntary action.

By comparison, consider the example of mortgage companies and their method of avoiding lapses in casualty insurance. Standard mortgage terms require adequate casualty insurance on the mortgaged property. Loan proceeds are not paid out until there is written proof of coverage in an amount that is sufficient to protect the loan balance. If there is a default on the premiums, the mortgage company must receive notice prior to the lapse of coverage so that it can pay the premiums due and add their cost to the balance owed.[15] This system prevents uninsured losses from ever occurring. The right to rely on a court order for health benefits should be protected with comparable safeguards.

1. Medical Support Enforcement 45 CFR Part 306; Child support includes payments to provide health care, 42 U.S.C. §662.

2. The definition of medical care is very broad. It includes: diagnosis, cure, mitigation, treatment, or prevention of disease, and any other undertaking for the purpose of affecting any structure or function of the body. It also includes transportation primarily for and essential to the above and medical insurance. see I.R.C. §213(d).

3. If the children's health coverage is maintained by the custodial parent, a different situation is presented. Typically the non-custodial parent is ordered to pay more child support and reimburse a share of the children's medical expenses not covered by the plan. A loss or reduction of coverage will therefore increase the liability exposure of the non-custodial parent.

4. A benefit plan providing medical care through insurance, reimbursement or otherwise. 26 USC §162(i)(3); 29 USC §1167(1).

5. In re Marriage of Blagg, 13 Kan.App.2d 530. If a decree provides no medical support, the non-custodial parent cannot be compelled to reimburse a child's medical expenses incurred by the custodial parent. Compare with the right of a third party who, in good faith, supplies necessaries for a child and may recover the reasonable value thereof from the parents. Greenspan v. Slate, 12 N.J. 426, 97 A.2d 390, (1953). Krause, Child Support in America, (1981), at 51.

6. Henry Aaron, Universal Insurance . . . to Lower the Cost of Medical Care, Kansas City Star, June 25, 1989. Copyright, 1989, The New Republic. "The fact that 37 million Americans lack health insurance has been repeated so often that it is losing its power to shock. Complaints about the exorbitant cost of health care have also taken on a rather tired air. But put these two problems together, and you have an attention getting paradox: America leads the developed world both in the fraction of its resources devoted to medical care, [nearly 12 percent of gross national product], and in the fraction of its population whose medical needs go unmet, [one in six under age 65]." Mr. Aaron is a senior fellow in economic studies at the Brookings Institute.

7. Medical Assistance Programs, 42 U.S.C. §1396.

8. 1986 U.S. Code Cong. & Ad. News 959.

9. Every state has a child support enforcement program operated by a "IV-D agency", (from Title IV, Part D of the Social Security Act of 1974. P.L. 93-647, 88 Stat. 2351; 42 U.S.C. §651.) These agencies are supervised by the Office of Child Support Enforcement, (OCSE), of the Department of Health and Human Services, (HHS). The Department of Social and Rehabilitation Services, (SRS), is the IV-D agency for Kansas.

10. Medical Support Enforcement, 45 CFR Part 306.

11. Health Maintenance Organization Act, 42 U.S.C. §300e; Kansas Health Maintenance Organization Act, K.S.A. 40-3201.

12. See note 6, supra.

13. Cheever v. Kelly, 96 Kan. 269, "In an action by a mother to recover expenditures for the support of a minor child, made necessary because of the father's neglect of parental duty, none but sums actually paid and reasonably necessary for the purpose can be recovered."

14. "Health insurance is considered reasonable in cost if it is employment-related or other group health insurance, regardless of delivery mechanism." 45 CFR §306.51(a)(1). See note 23, supra.

15. In newer arrangements, the mortgage company collects the premiums directly along with the principal and interest payments.

JOHN J. PHILLIPS
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OLATHE, KS 66061

Department of Social and Rehabilitation Services

House Bill 2007

Before the House Judiciary Committee
January 30, 1991

The primary responsibility of the SRS Child Support Enforcement Program is to help children by establishing and enforcing support obligations. Our duties include the establishment and enforcement of orders for medical support, primarily in the form of group health insurance coverage. From that perspective, SRS favors enactment of the Kansas Medical Support Act.

The dramatic rise in medical costs over recent years has placed a tremendous burden upon medicaid agencies. There is no doubt that innovative approaches are needed today to stretch medical assistance dollars further. Third party liability for medical expenses, set out in K.S.A. 39-719a, is increasingly important for SRS and the State of Kansas because, when payment is available through insurance or another third party resource, tax dollars need not be spent.

House Bill 2007 presents a straightforward, efficient way to prevent many children from depending upon tax dollars for their medical needs. It would assure that, when a court finds that a group plan is available at reasonable cost and orders coverage for a child, the enrollment occurs promptly. It further guarantees that a child's coverage will not be terminated without prior notice to **both** parents, an important safeguard.

The SRS Child Support Enforcement Program is subject to several federal regulations concerning medical support. In brief, CSE must seek group health coverage whenever a child support order is established or modified, must share coverage information with SRS Medical Programs, must monitor to insure coverage is maintained, and must take action to enforce the order to provide coverage if it is violated.

Under current Kansas law, unfortunately, violation of a health coverage order can only be remedied by bringing the uncooperative or forgetful parent back to court in civil contempt proceedings. Although contempt proceedings can be very effective in the right circumstances, they do not directly address the problem of getting the child's coverage started as quickly as possible. From CSE's perspective, this is the key innovation in House Bill 2007: it allows either parent or the support enforcement agency to initiate the child's enrollment.

Fiscally, the Kansas Medical Support Act would substantially benefit both SRS's Child Support Enforcement and Medical Programs. CSE has estimated that as much as $1,506,000 per year could be saved in medical expenditures by its enactment. CSE administrative savings are estimated at $10,352.24 per year, primarily due to the quick and efficient process for enrollment.

For these reasons, SRS strongly encourages favorable action on House Bill 2007.

Jamie L. Corkhill
Child Support Enforcement
Social and Rehabilitation Services
296-3237

HJUD
1/30/91

Attachment 2

Opponet

My name is Keith Kentch, I am a private citizen and also serve as anon-custodial parent on the board of KCSEA. I would like to thank-you for hearing my testimony concerning HB 2007.

While no one is in disagreement that healthbenefits for children is a problem,and this bill is intended for the good of our children also to relieve expenses for the state. HB 2007 could easily become an adminstrative nightmare. With less than 50% of child support being collected, money spent in collection and enforcement of this bill could far out weigh the money thought to be saved. The costs of enforcing this bill could by itself become astronomical.

This bill puts additional hardships on parents struggling to make support payments, and also on those trying to survive on support recieved. It could backfire and cause some support paying parents to stop paying entirely or in part. Much has been said about reasonable costs, but who decides reasonable? This one word alone could costs thousands of dollars in litagation for the state and both parties involved, just to decide whether $230 or $290 is reasonable.

HB 2007 is descriminatory and quite possibly unconstitutional! Married individuals are not required by state law to carry insurance, while it is beneficial, it is not mandatory.

It has been said that this bill does not make it mandatory that a judge order medical insurance to carried,but I call your attention to Sec.3-sub-section (e) Page 2 Line 25 states, the court shall order that such plan be provided. Now while I am not a lawyer and in some areas do not have great understanding of the law, I concede that this one line alone leaves a judge no choice but to order someone to carry insurance!

Based on the reasons stated above and probably many I have not mentioned I urge you the committee to soundly defeat this bill!

This concludes my testimony re: Hb 2007 again I thank-you for hearing my thoughts and comments.

HJUD
1/30/91
Attachment 3