

Approved 2/20/92

Date

MINUTES OF THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE

The meeting was called to order by SENATOR RICHARD L. BOND at
Chairperson

9:15 a.m./~~p.m.~~ on Wednesday, February 19, 1992 in room 529-S of the Capitol.

~~All~~ members ~~were~~ present ~~except~~ Senators Bond, Francisco, Kerr, Moran, Parrish, Reilly, Salisbury, Strick, Ward, and Yost.

Committee staff present:

Fred Carman, Revisor
Bill Wolff, Research
June Kossover, Committee Secretary

Conferees appearing before the committee:

Bob Alderson, Kansas Pharmacy Services Corporation
Secretary Donna Whiteman, Department of Social and Rehabilitation Services
Marilyn Bradt, Kansas for Improvement of Nursing Homes
Alice Nida, Kansas Department on Aging

The meeting was called to order by Chairman Bond at 9:15 a.m.

Bob Alderson, Kansas Pharmacy Services Corporation, requested the committee to introduce a bill to make changes in the composition of the Board of Directors of Pharmacy Service Corporation. (Attachment #1.) Senator Strick made a motion to introduce the legislation. Senator Parrish seconded the motion. The motion carried.

Chairman Bond opened the hearing on SB 607. Donna Whiteman, Secretary of the Kansas Department of Social and Rehabilitation Services, appeared before the committee to testify in support of SB 607. This bill provides the statutory authority for SRS to recover from the estates of deceased Medicaid recipients the cost of medical services provided to individuals who were 65 or older or were institutionalized while on the Medicaid program. (Attachment #2.) Secretary Whiteman requested the committee to change the effective date to the date of publication in the Register. In response to Senator Kerr's question, Secretary Whiteman advised that the bill gives the SRS the ability to recover from the estate assets in Savings and Loans, Credit Unions, Banks, etc.

Senator Parrish stated that she is very supportive of this measure, which came from the SRS Task Force.

Senator Salisbury requested clarification of the benefit to the SRS from changing the effective date to the date published in the Register.

Marilyn Bradt, Kansans for Improvement of Nursing Homes, appeared before the committee to testify in favor of SB 607. (Attachment #3.)

Alice Nida, Kansas Department on Aging, testified in support of SB 607 and requested an amendment providing a type of exemption for persons who have obtained long term care insurance. (Attachment #4.) In response to Senator Kerr's question, Ms. Nida explained the rationale behind such release of liability.

There being no further conferees, Chairman Bond declared the hearing on SB 607 closed. Senator Kerr made a motion, seconded by Senator Parrish, to approve the amendment requested by Secretary Whiteman. The motion carried. Senator Parrish made a motion to move SB 607 favorably as amended. The motion was seconded by Senator Ward. The motion carried. The bill will be carried by Senator Parrish.

On a motion by Senator Salistry, seconded by Senator Ward, the minutes of the meeting of February 18 were approved as submitted.

The committee adjourned at 9:45 a.m.

SENATE BILL NO. _____

By Committee on Financial Institutions and Insurance

AN ACT concerning nonprofit ^{pharmacy service Corporation} ~~dental~~ associations; board of directors; amending K.S.A. 1991 Supp. 40-19d03 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 1991 Supp. 40-19d03 is hereby amended to read as follows: 40-19d03. The membership of a nonprofit pharmacy service corporation organized under this act shall be comprised of the pharmacies who have executed participating agreements with the corporation. Any pharmacies in the state of Kansas shall be eligible to sign a participating agreement with the corporation. The affairs of the corporation shall be managed by a board of directors ~~comprised of 11 members, five of whom shall be elected from among the corporation's participating pharmacies and six of whom shall be appointed from among the general public of the state of Kansas. With respect to the public members of the board, two shall be appointed by the governor of the state of Kansas and the remainder by the commissioner of insurance.~~ The number, qualifications, terms of office and appointment of all directors shall be as defined provided in the bylaws of the corporation. The directors shall take the oath of office as in other corporations and duplicates of such subscribed oaths shall be forwarded to the commissioner of insurance for filing ~~in the commissioner's office.~~ The bylaws shall specify the number of directors necessary to constitute a quorum which shall be not less than six one more than one-half of the number of directors.

Sec. 2. K.S.A. 1991 Supp. 40-19d03 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

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Attachment #1

KANSAS DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES
Donna L. Whiteman, Secretary

Senate Financial Institution and Insurance Committee
Senate Bill 607

February 19, 1992

Mr. Chairman and members of the committee, I thank you for the opportunity to present you with this testimony.

Senate Bill 607 provides the statutory authority for the Department of SRS to recover from the estates of deceased Medicaid recipients the cost of medical services provided to individuals who were 65 or older or were institutionalized while on the Medicaid program. This recovery would not take place if the individual has a surviving spouse or a surviving minor or disabled child. Upon the death of any surviving spouse, recovery would be initiated on the estate of that spouse.

The proposal is based on current federal Medicaid regulations which permit States to recover correctly paid Medicaid expenses in two different ways. One is through establishment of liens and the second is through estate recovery. The Legislature has previously expressed interest in the State adopting a lien recovery process as a result of the division of assets law. Upon further review, the Department ultimately rejected this method as it was found to be ineffective, limited both in scope and potential recoveries. A lien can only be placed upon the real property of an individual which would generally limit it to a home. In addition, a lien can only be placed on the home if there is no surviving spouse or minor or disabled child who lives there and only when the agency has determined that the individual cannot reasonably be expected to be discharged and return home. In addition, such liens can only be used to recover expenses for a person who was institutionalized. These requirements, along with the administrative time and effort it would take to file for and maintain the liens, and in some instances to liquidate the property, limit the effectiveness of the lien process and make it a questionable tool as far as recoveries are concerned. There are only a couple of states that use any kind of a lien process.

On the other hand, estate recovery encompasses not only real property but also any available personal property, especially cash assets. As stated earlier, it also allows recovery on the estate of any surviving spouse. In addition, recovery can be initiated for anyone who was 65 years of age or older while on Medicaid and thus is not strictly limited to institutionalized persons. Because of the broader application of this methodology and its greater potential for significant recoveries, the Department believes this to be the more viable process. It should be noted that in 1937 Kansas enacted laws which provided for recoveries of expenditures to recipients of old age assistance through liens. In 1939 this law was changed to instead use an estate recovery method, but in 1941 the entire law was repealed.

Approximately 25 states currently have some form of estate recovery in place. Most of these states have had some degree of success in recovering monies based proportionately on the amount and type of effort undertaken. By far the most

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Attachment #2

successful effort has occurred in the State of Oregon which has done some form of estate recovery since 1949. In the two most recent years, Oregon has collected over \$6 million each year resulting in almost \$14 in recoveries for every \$1 spent in administering the program. The Department has developed its proposal based on the Oregon model and the statutory changes contained in this bill are patterned on the language used in Oregon's law. In addition, the Department has proposed that a special unit be created to administer the program as Oregon has done and this has been included as one of the Governor's budget proposals for FY 1993.

The General Accounting Office conducted a study in 1988 of the estate recovery programs and recommended that such a process be adopted nationally as a means of offsetting state and federal Medicaid costs and felt that Congress should mandate the establishment of such programs. They felt that estate recovery would promote more equitable treatment of Medicaid recipients and would achieve significant savings while treating the elderly equitably and humanely. GAO made particular note of the Oregon program and felt that some of the keys to their success were in establishing enabling legislation, securing recoveries from estates of surviving spouses, and establishing a central recovery unit. All of these keys have been followed by the Department in making this proposal.

Based on the experience of Oregon as well as other states having recovery programs, the primary focus of recovery would be upon any real property owned by the individual and/or spouse, including the homestead, and available cash assets, namely savings and bank accounts as well as other investments such as stocks, bonds, etc. Items such as personal effects, keepsakes, jewelry, and even vehicles would likely not be recovered from as the time and effort required to dispose of these items would in most instances outweigh any monies recovered from their sale. Only those items which would likely be probated would be considered for recovery purpose. Thus, for example, property held in joint tenancy would not be available for estate recovery purposes as ownership would pass to the other joint tenants based on rights of survivorship and never become part of the estate.

In regards to implementation, the bill contains several important measures.

1. It allows for claims against accounts in banks, savings and loan, and credit unions upon the person's death. Such accounts would otherwise be paid to beneficiaries and not be subject to probate. Oregon has similar authority and about a quarter of their recoveries comes from these claims.
2. Claims will only be initiated for medical assistance paid out after June 30, 1992. The Department does not believe that recovery of assistance paid out prior to the effective date of the law should occur. Current recipients who would be affected by the law need prior and adequate notification of the changes. By allowing for retroactive recovery, the individual could not have made an informed decision about receiving medical assistance as the law would not exist prior to July 1.
3. The law allows the Secretary discretion in terms of pursuing estate claims. It is realized that not every estate will be sufficient enough to make

recovery cost effective and that there may be instances of hardship where the estate is not pursued.

4. The Department will have a first class claim against the estate following the payment of any appropriate funeral expenses. This will provide a greater opportunity for success in recovering monies paid out.

The main functions of the estate recovery unit will be to collect and track data concerning the assets of affected Medicaid clients, to file and collect on claims through probate or other collection activities, and to distribute monies collected based on federal and state share. The attorney position will be the overall manager of the unit and serve as the chief legal advisor in all of the unit's transactions. The legal assistant will largely be responsible for assisting the attorney in researching and initiating claims as well as collecting and tracking data on all potential resources. The accountant would manage the accounts receivable functions involved as claims are collected and distributing these funds properly. The office assistant would provide all necessary secretarial and clerical support for the unit. Staff in the agency's field offices will primarily be responsible for referring all asset information to the recovery unit at the time of application and again at the time of death. They would also be responsible for reporting to the unit when the recipient dies as well as informing potential clients about the estate recovery requirement and their responsibility to report any changes in assets.

A sample recovery scenario is attached to this testimony that provides an overview of how the recovery process would work.

In summary, we strongly support this bill and look forward to working with the Legislature to implement an effective estate recovery program. Such program will be to the benefit of both the State and those people we serve.

Donna L. Whiteman
Secretary

ESTATE RECOVERY EXAMPLE

To illustrate how the recovery process might operate, consider the following example: A 70 year old single individual applies for assistance with his nursing home care. At the time of application, his assets consist of a home valued at \$30,000, a \$1,000 savings account, and some farm land valued at \$10,000 which is currently rented. The client is resource eligible as the home is exempt based on the client's stated intent to return to it and the farm property is exempt as income-producing property. Field staff refer this information to the recovery unit at the time the application is approved and the unit staff record and track this information. The individual dies a year later and field staff relay this information to the recovery unit. No changes have occurred to his assets except the savings account is now depleted. The recovery unit obtains information concerning the individual's Medicaid expenses which were paid out while he was institutionalized and these amounted to \$20,000. The estate ends up being probated and the recovery unit files a claim.

After payment of any funeral expenses from the estate, the remaining amount would be available for recovery. In this case example, the State would likely recover all Medicaid expenses paid out based on the value of the client's estate.



KINH Kansans for Improvement of Nursing Homes, Inc.

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

TESTIMONY PRESENTED TO
THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE
CONCERNING SB 607

February 19, 1992

Mr. Chairman and Members of the Committee:

KINH is a consumer organization of some 800 members statewide, interested in the quality of care in nursing homes. Our primary interest in both quality and accessibility necessarily leads us to an interest in the cost of nursing home care, both to the private pay consumer and to the state as well.

SB 607 provides for recovery of the State's Medicaid costs from the estate of deceased recipients. It protects the surviving spouse and dependent children, commencing the recovery process only upon the death of the spouse and providing that there is no disabled or minor child surviving.

KINH supports SB 607, believing that this is a responsible way for the state to recover at least a portion of its Medicaid nursing home expenses. Estate recovery programs have proven successful in many other states. Oregon, in particular, has established a program which brings in \$10 for every dollar of administrative cost to the state.

KINH urges your support for SB 607.

Marilyn Bradt
Legislative Coordinator

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Attachment #3

Testimony on SB 607
Before the Senate Committee
on
Financial Institutions and Insurance
by
Kansas Department on Aging
February 19, 1992

The Kansas Department on Aging supports SB 607. We understand the need to reduce the growth in expenditures of Medicaid for institutional long term care. We believe that estate recovery under SB 607 can recover a portion of expended funds without negatively impacting on the care of older Kansans who medically need nursing home care.

We believe that significant protections for older Kansans are built into SB 607. As written, SB 607 is not retroactive, therefore allowing recipients of Medicaid to have notice before estate recovery goes into effect. A major protection is that SB 607 would not seek recovery until after the death of the recipient, the death of the recipients' spouse and only at a time when the recipient has no surviving child who is under 21 years of age or is blind or permanently and totally disabled. The estate recovery program would not put a lien on people's property. The surviving spouses could use the property as they saw fit.

Other states, most notably Oregon, have pursued this option with varying results. But virtually all states with estate recovery are able to recover enough money to make the program economically viable.

We would, however, recommend that SRS provide a type of release of liability under estate recovery to persons receiving nursing home assistance who have obtained long term care insurance. Massachusetts has such a policy. (Mass. Gen. Laws Ann. Supp. to Chaps. 113 - 121, 118E § 16D.) Increased use of long term care insurance is another option that Kansas has to both reduce state fund expenditures and provide needed long term care.

Estate recovery is one option that Kansas has to reduce Medicaid expenditures for nursing home care. The Department on Aging suggests that estate recovery could negate the need for a 300% Medicaid cap. The Department on Aging believes estate recovery to be part of a reasonable solution to the difficult fiscal decisions about Medicaid.

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Attachment #4