

Approved 4-10-92
Date

MINUTES OF THE SENATE COMMITTEE ON PUBLIC HEALTH AND WELFARE

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

2:00 ~~am~~ p.m. on April 8, 1992 in room 527-s of the Capitol.

All members were present except:

Committee staff present:

Emalene Correll, Legislative Research
Bill Wolff, Legislative Research
Norman Furse, Revisor's Office
Jo Ann Bunten, Committee Secretary

Conferees appearing before the committee:

Chip Wheelen, Kansas Medical Society
Robert L. Epps, SRS

Chairman Ehrlich called the meeting to order at 2:00 p.m.

Continued Hearing on SB 775 - Creating the medicaid drug utilization review board.

Chip Wheelen, KMS, submitted written testimony and expressed support for SB 775. Mr. Wheelen stated the bill is an effort to comply with the provisions of Section 4401 of the Omnibus Budget Reconciliation Act of 1990, and while there is a functioning DUR program currently within the state's Medicaid program, this bill would codify some of the important and salient features of the federal requirements. Seven principles were outlined that resulted in the collaboration between the AMA, APA and PMA in the summer of 1991 that should apply in any DUR program. (Attachment 1) Mr. Wheelen stated meetings should be published in the Kansas Register so that those who are interested can attend an open public forum. An example was given if utilization review was not done in an appropriate fashion. Question was asked what the outcome would be if Section 6 of the bill was struck, and Mr. Wheelen felt it would be damaging because prior approval is probably the most important issue in the bill.

Robert L. Epps, SRS, submitted written testimony in opposition to SB 775 because it unnecessarily duplicates and inappropriately adds requirements to the federal statute known as the Omnibus Budget Reconciliation Act (OBRA) of 1990. Mr. Epps stated the present DUR committee is a clinical committee which discusses the sometimes sensitive, confidential, and volatile issues surrounding prescription drug coverage, prescribing, dispensing, and usage. The committee meetings are intended to make unbiased and objective medical and pharmaceutical recommendations. Over the years, this committee has provided both an objectively managed drug formulary, and reviews of prescribing, dispensing and usage habits, based on medical and pharmaceutical expertise, are free of marketing and advertising influence. Concern was expressed with Section 6 of the bill which would virtually eliminate the current prior authorization program. (Attachment 2) During Committee discussion Mr. Epps stated the bill would have a substantial fiscal impact, and language from the federal act was requested. In regard to DUR meetings, they could be modified and portions could be made public.

Action on SCR 1645 - Constitutional amendment making public health a constitutional responsibility of the legislature.

Senator Hayden made a motion the Committee adopt SCR 1645, seconded by Senator Strick. Senator Walker discussed his amendment that would add language to the Resolution. (Attachment 3) Senator Hayden stated that the language of the proposed amendment was incorporated in

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON SENATE PUBLIC HEALTH AND WELFARE,
room 527, Statehouse, at 2:00 a.m./p.m. on April 8, 1922

the Resolution. Senator Walker stated his amendment would be more specific by mentioning access, quality and cost. Senator Walker made a substitute motion to amend SCR 1645 on page 1, line 23, by inserting after "programs", "to provide for access to quality, affordable health care to every Kansas citizen." Question was raised regarding the fiscal note. The substitute motion was seconded by Senator Ward. The substitute motion lost. Senator Walker requested his vote be recorded as "yes." Back to the original motion. Senator Ward requested staff look into the fiscal impact of the Resolution if adopted, and if the state would be subject to litigation to enforce this Constitutional right and what kind of litigation would be forthcoming. The motion carried. Senator Hayden will carry the Resolution.

Action on SB 781 - Fee for examination of psychologists.

Senator Salisbury made a motion to recommend SB 781 favorably for passage, seconded by Senator Langworthy. No discussion followed. The motion carried.

Action on HB 2925 - Establishing the deaf and hearing impaired fee fund.

Senator Burke made a motion to recommend HB 2925 favorably for passage, seconded by Senator Hayden. No discussion followed. The motion carried. Senator Burke will carry the bill.

Subcommittee Report on Sub. for HB 2566 - Assessment and referral service prior to admission to an adult care home.

Senator Langworthy, subcommittee Chairperson, reported on the recommendations of the subcommittee consisting of Chairperson Langworthy, Senator Reilly and Senator Walker. Balloon proposals were distributed to the Committee. Senator Langworthy stated that the subcommittee could not make a decision on HB 2566, and the bill was brought back to the Committee without a recommendation. Staff Furse explained the amendments on the balloon copy of the bill that were proposed by the subcommittee. (Attachment 4) Senator Ward made a motion to adopt the amendments, seconded by Senator Walker. No discussion followed. The motion carried. Senator Ward made a motion to recommend HB 2566 as amended favorably for passage, seconded by Senator Walker. Senator Langworthy stated the intent of the bill is very good, however, there is a problem with increased nursing home cost. The bill would require private pay people, before going into a nursing home, fill out papers and obtain certain information. Only about 12% of Medicaid people are screened, and people need to know their options. To mandate that everyone has to go through this process is a concern, and there may be a substantial fiscal note involved. Senator Ward expressed his opinion that the bill would save money, and the ultimate decision to go into a nursing home is still the patient's. Senator Walker stated the bill would also save money in the long term, the assessment would only take about an hour, and consumers would know there may be other options more suitable for them than a nursing home. The motion carried. Senator Ward will carry the bill.

Action on HB 3064 - Out-of-state pharmacy registration.

Senator Burke made a motion to strike subsection (c) on page 4, seconded by Senator Langworthy.

Discussion related to the requirements of subsection (c) and whether this deletion would be good for the consumer. The motion carried.

Senator Burke made a motion to strike "90" and insert "180" on page 5, line 19, and strike "or fails to resolve the violation complained of to the satisfaction of the board," seconded by Senator Langworthy. No discussion followed. The motion carried.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON PUBLIC HEALTH AND WELFARE

room 527-S, Statehouse, at 2:00 a.~~xx~~p.m. on April 8, 1992.

Senator Burke made a motion to strike "shall" and insert "may" on page 5, subsection (g), line 34, seconded by Senator Hayden. Discussion related to language in the bill regarding whether the Attorney General "shall" bring action of a violation in a court, and what would be in the best interest of the consumer. Senator Walker objected changing "shall" to "may" saying it would weaken consumer protection. The motion carried.

Clarification was made by staff of amendments on HB 3064. Senator Burke made a motion to recommend HB 3064 as amended favorably for passage, seconded by Senator Salisbury. Discussion followed regarding problems that may exist with out-of-state pharmacies and that licensure legislation would not resolve all of the problems.

Senator Walker made a motion to amend SB 775 into HB 3064 with new Section 6 stricken, seconded by Senator Langworthy. No discussion followed. The motion carried.

Senator Burke made a motion to recommend HB 3064 as amended favorably for passage, seconded by Senator Langworthy. No discussion followed. The motion carried.

The meeting was adjourned at 3:00 p.m.

SENATE
PUBLIC HEALTH AND WELFARE COMMITTEE

DATE 4-8-92

(PLEASE PRINT)
NAME AND ADDRESS

ORGANIZATION

Tom Hitchcock E Eugene Stephens	Bd. of Pharmacy SRS / DMS
Dona Booe	SRS / DMS
Robert Epps	SRS
Bill Sneed TOPEKA	HIAA
John Notem	Syntex / Gluco
Beta L Wolf	SRS
Lynnda D. ...	KDOA
Jeanne D... ..	KDOA
Bryd Smart	Pfizer
Harold R... ..	KADU
Bob Williams	Ks Pharmacists Assoc
Rebecca P... ..	Ks Pharmacists Assn.
Janice	observer
Marilyn Bradt	Lawrence
LISA Getz	WICHITA Hospitals
Tom Burgess	Kansas Health Care Assn.
John L. Kithabes	Ks. Health Care Assn.
Margot	Boehringer Ingelheim

SENATE
PUBLIC HEALTH AND WELFARE COMMITTEE

DATE 4-8-92

(PLEASE PRINT)
NAME AND ADDRESS

ORGANIZATION

BILL HENRY

PMA

Martha Jenkins

Ks. Govt Consulting

Anita Kolusch

KS Pharmacists Assn.



KANSAS MEDICAL SOCIETY

623 SW 10th Ave. • Topeka, Kansas 66612 • (913) 235-2383
WATS 800-332-0156 FAX 913-235-5114

April 6, 1992

TO: Senate Public Health and Welfare Committee
FROM: Kansas Medical Society *Chap Wheeler*
SUBJECT: Senate Bill 775; Medicaid Drug Utilization Review

Thank you for this opportunity to express support for the provisions of SB 775, which is an effort to comply with the provisions of Section 4401 of the Omnibus Budget Reconciliation Act of 1990. While we have a functioning DUR program within our state Medicaid program already, this bill would codify some of the important and more salient features of the federal requirements.

In the summer of 1991, the American Medical Association collaborated with the American Pharmacists Association and the Pharmaceutical Manufacturers Association to establish seven fundamental principles that should apply in any DUR program. Those principles are as follows:

1. The primary emphasis of a DUR program must be to enhance quality of care for patients by assuring appropriate drug therapy.
2. Criteria and standards for DUR must be clinically relevant.
3. Criteria and standards for DUR must be nonproprietary and must be developed and revised through an open professional consensus process.
4. Interventions must focus on improving therapeutic outcomes.
5. Confidentiality of the relationship between patients and practitioners must be protected.
6. Principles of DUR must apply to the full range of DUR activities including prospective, concurrent and retrospective drug use evaluation.
7. DUR program operations must be structured to achieve the principles of DUR.

Enactment of SB 775 would represent significant progress toward implementation of these principles. We respectfully request that you recommend SB 775 for passage. Thank you for considering our position.

CW/cb

Senate P. H. & W.
Attachment #1
4-8-92 = 1

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

Committee on Senate Public Health and Welfare
Testimony on Senate Bill 775

April 6, 1992

The Kansas Department of Social and Rehabilitation Services, (SRS) opposes the passage of SB 775 because it unnecessarily duplicates, and inappropriately adds requirements to the federal statute known as the Omnibus Budget Reconciliation Act (OBRA) of 1990.

OBRA 90 requires that a Drug Utilization Review (DUR) system incorporating both retrospective DUR, (with historical paid claims data,) and prospective DUR, (performed by the pharmacist counselling the patient before dispensing the prescription,) be in place by January 1, 1993. The Kansas Board of Pharmacy has a regulation requiring pharmacists to initiate oral patient counseling as a matter of routine, thus the Kansas Medicaid Program is in compliance with the prospective DUR requirements.

For the retrospective review requirements, the Kansas Medicaid Program has contracted with the Kansas Pharmacy Foundation since 1976 to provide a Drug Utilization Review Committee. This is a clinical committee which discusses the sometimes sensitive, confidential, and volatile issues surrounding prescription drug coverage, prescribing, dispensing, and usage. The committee meetings are intended to make unbiased and objective medical and pharmaceutical recommendations. Over the years, this Committee has provided both an objectively managed drug formulary, and reviews of prescribing, dispensing and usage habits, based on medical and pharmaceutical expertise, free of marketing and advertising influence.

Section 6 of SB 775 would virtually eliminate the current prior authorization program, which is the remaining cost containment program allowed under OBRA 90. This section appears to be contrary to the Congressional intent that pharmacy prior authorizations be allowed based on medical necessity criteria and for economic reasons. OBRA 90 requires a much more open formulary than Kansas Medicaid had previously covered, but it specifically allows for pharmacy prior authorization programs which SB 775 would, for all practical purposes, eliminate.

In summary, SRS opposes the passage of SB 775 because:

- o it is a duplication of existing federal statutes, with which Kansas is already in compliance;
- o it preempts the Congressional Intent that the state Medicaid programs have management flexibility; and
- o it sharply reduces the one remaining HCFA sanctioned cost containment measure, which is the authority to require criteria based prior authorization for selected drugs.

Robert L. Epps
Commissioner
Income Support/Medical Services
(913) 296-6750

Senate P. NEW
Attachment # 2
4-8-92

" The legislature shall provide for the promotion and protection of the health of the people of the state of Kansas by establishing and maintaining programs to provide for access to quality, affordable health care to every Kansas citizen. thereof. The legislature shall make suitable provision for the finance of the programs established for such purpose."

Senate P. 4700
Attachment # 3
4-8-92

Substitute for HOUSE BILL No. 2566

By Committee on Public Health and Welfare

1-31

- 1) Proposed amendment to bill
- 2) Subcommittee report without recommendation on bill

P. New
 #4
 Senate
 Attachment
 4-8-92

9 AN ACT concerning social welfare; providing information and assis-
 10 tance to persons in obtaining appropriate long-term care services;
 11 requiring assessment and referral services prior to admission to
 12 an adult care home; amending K.S.A. 39-931a and repealing the
 13 existing section; also repealing K.S.A. 39-777 and 39-778.

14
 15 *Be it enacted by the Legislature of the State of Kansas:*

16 New Section 1. (a) The secretary of aging shall assure that each
 17 area agency on aging shall compile comprehensive resource infor-
 18 mation for use by individuals and agencies related to long-term care
 19 resources including all area offices of the department of social and
 20 rehabilitation services and local health departments. This information
 21 shall include, but not be limited to, resources available to assist
 22 persons to choose alternatives to institutional care.

23 (b) Adult care homes as defined under K.S.A. 39-923 and amend-
 24 ments thereto and medical care facilities as defined under K.S.A.
 25 65-425 and amendments thereto shall make available information
 26 referenced in subsection (a) to each person seeking admission or
 27 upon discharge as appropriate. Any person licensed to practice the
 28 healing arts as defined in K.S.A. 65-2802 and amendments thereto
 29 shall make the same resource information available to any person
 30 identified as seeking or needing long-term care. [Each senior center
 31 and each area agency on aging shall make available such
 32 information.]

33 (c) (1) The secretary of social and rehabilitation services shall
 34 adopt a uniform needs assessment instrument to be used by all
 35 providers of assessment and referral services. The uniform needs
 36 assessment instrument shall be as concise and short in length as is
 37 consistent with the purposes of the instrument. In addition to other
 38 uses of the needs assessment instrument, the secretary of social and
 39 rehabilitation services shall use this instrument to annually compile
 40 data on the need for community based services that could further
 41 delay admission to adult care homes.

42 (2) On and after July 1, 1992, except as provided in subsection
 (e), no person shall be admitted to an adult care home providing

January 1, 1993

care under title XIX of the federal social security act unless the person has received assessment and referral services as defined in subsection (c)(1). These services shall be provided under the senior care act, under the older Americans act, by the secretary of social and rehabilitation services or by other providers as designated by the secretary under subsection (d).

(d) Except as otherwise provided in this subsection (d), any person may apply to the secretary of social and rehabilitation services, on forms provided by the secretary, to become a designated provider of assessment and referral services. The secretary of social and rehabilitation services shall establish standards which must be met before a person may be designated as a provider of assessment and referral services. Each application shall be accompanied by an application fee fixed by the secretary of social and rehabilitation services based on the estimated number of assessments to be performed by the applicant but not to exceed \$150. Fees shall be fixed in amounts necessary to recover the costs associated with the regulation of providers under this subsection (d). Once a provider is approved, the application fee shall not be refundable. If the application is denied, 90% of the application fee shall be refunded to the applicant and 10% of the fee shall be retained by the secretary. The designation as a provider of assessment and referral services shall expire one year after the date of its issuance and may be renewed by such provider upon application to the secretary of social and rehabilitation services, payment of the application fee and a finding by the secretary that the provider meets the standards for designation as a provider of assessment and referral services. No person licensed to operate an adult care home under the adult care home licensure act, or any agent or employee of such person, shall be designated as a provider of assessment and referral services under this subsection. The secretary of social and rehabilitation services may adopt rules and regulations as necessary to administer the provisions of this subsection. The secretary of social and rehabilitation services shall remit all moneys received by the secretary under this subsection (d) to the state treasurer at least monthly. Upon receipt of any such remittance the state treasurer shall deposit the entire amount thereof in the state treasury and the same shall be credited to the social welfare fund.

(e) The following persons may be admitted to an adult care home providing care under title XIX of the federal social security act without having received assessment and referral services as defined under subsection (c)(1):

(1) A patient who has entered an acute care facility from an adult

4-2

4-3

1 care home and is returning to the adult care home;

2 (2) a resident transferred from another adult care home;

3 (3) individuals whose length of stay is expected to be ~~60~~ days or

4 less based on a physician's certification, if the adult care home notifies

5 the secretary of social and rehabilitation services prior to admission

6 and provides ~~an update to the secretary 60 days after admission~~;

7 ~~(4) individuals who have a contractual right to have their adult~~

8 ~~care home care paid for indefinitely by the veteran's administration;~~

9 ~~(5) individuals who have received assessment and referral services~~

10 ~~by another state within three months before admission to an adult~~

11 ~~care home in this state;~~

12 ~~(6) individuals who are admitted to an adult care home on an~~

13 ~~emergency basis pursuant to a physician's certification of the emer-~~

14 ~~gency if an assessment occurs within a reasonable time subsequent~~

15 ~~to such admission as specified by rules and regulations of the sec-~~

16 ~~retary of social and rehabilitation services; or~~

17 ~~(7) individuals entering an adult care home conducted by and~~

18 ~~for the adherents of a recognized church or religious denomination~~

19 ~~for the purpose of providing care and services for those who depend~~

20 ~~upon spiritual means, through prayer alone, for healing.~~

21 (f) This section shall not be construed to prohibit the selection

22 of any long-term care resource by any person. ~~An individual's right~~

23 ~~to choose does not supersede the authority of the secretary of social~~

24 ~~and rehabilitation services to determine whether the placement is~~

25 ~~appropriate and to deny eligibility for long-term care payment if~~

26 ~~inappropriate placement is chosen.~~

27 (g) The secretary of social and rehabilitation services shall report

28 to the governor and to the legislature on or before December 31,

29 1993, and each year thereafter on or before such date, an analysis

30 of the information collected under this section ~~and such other in-~~

31 ~~formation relating to the administration of this section as the secretary~~

32 ~~deems appropriate.~~

33 Sec. 2. K.S.A. 39-931a is hereby amended to read as follows:

34 39-931a. (a) As used in this section, the term "person" means any

35 person who is an applicant for a license to operate an adult care

36 home or who is the licensee of an adult care home and who has

37 any direct or indirect ownership interest of ~~twenty-five percent~~

38 ~~(25%)~~ 25% or more in an adult care home or who is the owner, in

39 whole or in part, of any mortgage, deed of trust, note or other

40 obligation secured, in whole or in part, by such facility or any of

41 the property or assets of such facility, or who, if the facility is

organized as a corporation, is an officer or director of the corporation,

or who, if the facility is organized as a partnership, is a partner.

other than from a boarding care home, an intermediate personal care home or a one-bed and two-bed adult care home

30

a completed assessment from an authorized provider of assessment to the secretary within 30 days after admission

4

5

, analysis that identifies the need for home and community based services

4-4

(b) Pursuant to K.S.A. 39-931, the licensing agency may deny a license to any person and may suspend or revoke the license of any person who:

(1) Has willfully or repeatedly violated any provision of law or rules and regulations adopted pursuant to article 9 of chapter 39 of the Kansas Statutes Annotated *and acts amendatory of the provisions thereof or supplemental thereto*;

(2) has been convicted of a felony;

(3) has failed to assure that nutrition, medication and treatment of residents, including the use of restraints, are in accordance with acceptable medical practices; ~~or~~

(4) has aided, abetted, sanctioned or condoned any violation of law or rules and regulations adopted pursuant to article 9 of chapter 39 of the Kansas Statutes Annotated; *or*

(5) *has willfully admitted a person to an adult care home as a resident of the home in violation of subsection (c)(2) of section 1 and amendments thereto.*

Sec. 3. K.S.A. 39-777, 39-778 and 39-931a are hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the Kansas register.