

Approved: 3-31-95  
Date

MINUTES OF THE SENATE COMMITTEE ON PUBLIC HEALTH AND WELFARE.

The meeting was called to order by Chair Sandy Praeger at 11:00 a.m. on March 28, 1995 in Room 526-S of the Capitol.

All members were present except:

Committee staff present: Emalene Correll, Legislative Research Department  
Gordon Self, Revisor of Statutes Office  
Jo Ann Buntun, Committee Secretary

Conferees appearing before the committee:

Others attending: See attached list

**Continued discussion on Sub HB 2458 - Enacting the developmental disabilities reform act**

Staff briefed the Committee on the balloon of **Sub HB 2458**. (Attachment 1)

During Committee discussion, the Chair noted that the technical amendments offered by the House Committee of the Whole were removed in the balloon of the bill with the exception of three sections. The stricken amendments would be discussed during the Interim, and such clean-up amendments would be ready for legislative action in January 1996.

Senator Jones made a motion the Committee adopt the balloon amendments to **Sub HB 2458**, seconded by Senator Langworthy. The motion carried.

Senator Jones made a motion the Committee recommend **Sub HB 2458 as amended** favorably for passage, seconded by Senator Langworthy. The motion carried.

The meeting was adjourned at 11:30 a.m.



[As Amended by House Committee of the Whole]

Session of 1995

Substitute for HOUSE BILL No. 2458

By Select Committee on Developmental Disabilities

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AN ACT [concerning developmental disabilities;] enacting the developmental disabilities reform act; prescribing certain powers, duties and functions for the secretary of social and rehabilitation services; ~~abolishing mental health and retardation services and the commissioner thereof and establishing mental health and developmental disabilities and the commissioner thereof and prescribing powers, duties and functions thereof; amending K.S.A. 39-1607, 65-4043, 65-4411, 65-4412, 65-4413, 65-4414, 65-4415, 65-5218, 65-5601, 74-5502, 74-5505, 74-6703, 75-3303, 75-3303a, 75-3314, 75-3328, 76-12a01, 76-12a06, 76-12a08, 76-12b10, 76-17a10 and 76-1936 and K.S.A. 1994 Supp. 21-3734, 75-2035, 75-3717 and 76-12a04 and repealing the existing sections].~~

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

sections 1 through 10

[New] Section 1. The provisions of ~~this act~~ shall be known and may be cited as the developmental disabilities reform act.

[New] Sec. 2. It is the policy of this state to assist persons who have a developmental disability to have:

- (a) Services and supports which allow persons opportunities of choice to increase their independence and productivity and integration and inclusion into the community;
- (b) access to a range of services and supports appropriate to such persons; and
- (c) the same dignity and respect as persons who do not have a developmental disability.

[New] Sec. 3. As used in this act:

- (a) "Adaptive behavior" means the effectiveness or degree with which an individual meets the standards of personal independence and social responsibility expected of that person's age, cultural group and community.
- (b) "Affiliate" means an entity or person that meets standards set out in rules and regulations adopted by the secretary relating to the provision of services and that contracts with a community developmental disabilities

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organization.

(c) "Community services" means services provided to meet the needs of persons with developmental disabilities relating to work, living in the community, and individualized supports and services.

(d) "Community developmental disability organization" means an entity that is organized pursuant to K.S.A. 19-4001 through 19-4015 and amendments thereto.

(e) "Community service provider" means a community developmental disability organization or affiliate thereof.

(f) "Developmental disability" means:

(1) Mental retardation; or

(2) a severe, chronic disability, which:

(A) Is attributable to a mental or physical impairment, a combination of mental and physical impairments or a condition which has received a dual diagnosis of mental retardation and mental illness;

(B) is manifest before 22 years of age;

(C) is likely to continue indefinitely;

(D) results, in the case of a person five years of age or older, in a substantial limitation in three or more of the following areas of major life functioning: Self-care, receptive and expressive language development and use, learning and adapting, mobility, self-direction, capacity for independent living and economic self-sufficiency;

(E) reflects a need for a combination and sequence of special interdisciplinary or generic care, treatment or other services which are lifelong, or extended in duration and are individually planned and coordinated; and

(F) does not include individuals who are solely and severely emotionally disturbed or seriously or persistently mentally ill or have disabilities solely as a result of the infirmities of aging.

(g) "Institution" means state institution for the mentally retarded as defined by subsection (c) of K.S.A. 76-12b01 and amendments thereto or intermediate care facility for the mentally retarded of nine beds or more as defined by subsection (p) of K.A.R. 30-10-200 and amendments thereto.

(h) "Mental retardation" means substantial limitations in present functioning that is manifested during the period from birth to age 18 years and is characterized by significantly subaverage intellectual functioning existing concurrently with deficits in adaptive behavior including related limitations in two or more of the following applicable adaptive skill areas: Communication, self-care, home living, social skills, community use, self-direction, health and safety, functional academics, leisure and work.

(i) "Secretary" means the secretary of social and rehabilitation serv-

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ices.

[New] Sec. 4. (a) Except as otherwise specifically provided in this act and subject to appropriations of federal and state funds, the secretary, after consultation with representatives of community developmental disability organizations, community service providers, families and consumer advocates, shall implement and administer the provisions of the developmental disabilities reform act in accordance with the following policies.

Persons with developmental disabilities shall:

(1) Be provided assistance to obtain food, housing, clothing and medical care; protection from abuse, neglect and exploitation; and a range of services and supports which assist in the determination of individual needs; and

(2) receive assistance in determining their needs; be provided information about all service options available to meet those needs; have coordination of services delivered; be assisted and supported in living with their families, or independently; be assisted in finding transportation to support access to the community; and receive individually planned habilitation, education, training, employment and recreation subject to supports and services available in the community of their choice.

(b) To accomplish the policies set forth in subsection (a), the secretary, subject to the provisions of appropriation acts, shall annually propose and implement a plan including, but not limited to, financing thereof which shall: (1) Provide for an organized network of community services for persons with developmental disabilities; (2) maximize the availability of federal resources to supplement state and local funding for such systems; and (3) reduce reliance on separate, segregated settings in institutions or the community for persons with developmental disabilities.

(c) The secretary shall report to the legislature the number of persons with developmental disabilities eligible to receive community services and shall make a progress report on the implementation of the annual plans and the progress made to accomplish a comprehensive community services system for persons with developmental disabilities.

(d) The secretary shall prepare and submit budget estimates for the department of social and rehabilitation services to the division of the budget and the legislature and shall establish and implement policies and procedures within the programs and activities of the department so that funds for state-level programs and activities for persons who are developmentally disabled are allocated between services delivered in institutions and community services in percentages that approximate the percentages of persons served in those respective settings. If there is a deviation from such percentages the secretary shall submit a report to the legislature that contains an explanation on why such deviation from such percentages occurred and what is to be done to eliminate such deviation

in such percentages in the future.

(e) Subject to the provisions of this act and appropriation acts, the secretary shall administer and disburse funds to each community developmental disability organization for the coordination and provision of community services.

(f) The secretary shall establish procedures and systems to evaluate the results and outcomes of the implementation of this act to assure the attainment of maximum quality and efficient delivery of community services.

**[New] Sec. 5.** (a) In addition to any other power and duty prescribed by law, and subject to appropriations, a community developmental disability organization shall have the power and duty to:

(1) Directly or by subcontract, serve as a single point of application or referral for services, and assist all persons with a developmental disability to have access to and an opportunity to participate in community services;

(2) provide either directly or by subcontract, services to persons with a developmental disability, including, but not limited to, eligibility determination; explanation of available services and service providers; case management services, if requested; assistance in establishing new providers, if requested; and advocacy for participation in community services;

(3) organize a council of community members, consumers or their family members or guardians, and community service providers, composed of a majority of consumers or their family members or guardians who shall meet not less than quarterly to address systems issues, including, but not limited to, planning and implementation of services; and develop and implement a method by which consumer complaints, inter-agency and other intrasystem disputes are resolved;

(4) provide, directly or by subcontract, information about affiliate and referral services to persons with a developmental disability whose particular needs can be met in the community or through government; and

(5) ensure that affiliates have the option to review referrals and waiting lists on a periodic basis to contact potential consumers with information concerning their services.

(b) Contracts shall be with existing community service providers whenever appropriate.

**[New] Sec. 6.** To carry out the provisions of this act, the secretary shall establish after consultation with representatives of community developmental disability organizations and affiliates thereof, and families and consumer advocates:

(a) A system of adequate and reasonable funding or reimbursement for the delivery of community services that:

(1) For persons moving from institutions into the community, directs

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1 funding to follow in an amount not less than that which is required to  
2 reimburse community service providers for services as set forth in such  
3 person's plan for transfer from the institution to community services in-  
4 cluding expenses of relocation and initiation of services;

5 (2) consolidates federal and state funding sources;

6 (3) requires an independent, professional review of the rate struc-  
7 tures on a biennial basis resulting in a recommendation to the legislature  
8 regarding rate adjustments. Such recommendation shall be adequate to  
9 support: (A) A system of employee compensation competitive with local  
10 conditions; (B) training and technical support to attract and retain qual-  
11 ified employees; (C) a quality assurance process which is responsive to  
12 consumers' needs and which maintains the standards of quality service;  
13 (D) ~~coverage under K.S.A. 75-6101 through 75-6110 and amendments~~  
14 ~~thereto~~ **[risk management and insurance costs]**; and (E) program  
15 management and coordination responsibilities;

16 (b) a system of quality assurance based on standards set out in rules  
17 and regulations adopted by the secretary which insures effective service  
18 delivery, fiscal accountability and networking cooperation and which al-  
19 lows community service providers to present evidence of attainment of  
20 national accreditation or compliance with state or federal laws or rules  
21 and regulations, or both, to indicate compliance with such standards; and

22 (c) a system of contracting that:

23 (1) Authorizes open and equitable negotiation between contracting  
24 parties or their designated agent or agents;

25 (2) authorizes mediation by an independent entity chosen by the par-  
26 ties to the contract in the event of contract disputes and if mediation is  
27 not completed prior to the end of any existing contract, authorizes an  
28 extension of time of such existing contract or entering into a temporary  
29 contract;

30 (3) requires achievement and maintenance of community services  
31 standards by community service providers;

32 (4) includes compensation for community services which meet the  
33 individualized needs of persons with developmental disabilities for com-  
34 munity services; and

35 (5) requires community developmental disability organizations to  
36 contract with those affiliates from whom a person with a developmental  
37 disability chooses services.

38 **[New]** Sec. 7. Whenever the secretary finds a community service  
39 provider has failed to comply with the requirements, standards or rules  
40 and regulations established pursuant to this act or any other provision of  
41 law, the secretary shall have the power to inspect and review the opera-  
42 tions of the community service provider and identify deficiencies. The  
43 secretary and such community service provider shall choose an inde-

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1 pendent entity to mediate any dispute regarding the secretary's finding  
2 that such community service provider has failed to comply with such  
3 requirements, standards or rules and regulations and the secretary's iden-  
4 tified deficiencies. If such mediation is not able to resolve any such dis-  
5 pute and the secretary finds that the community service provider has still  
6 failed to comply with such requirements, standards or rules and regula-  
7 tions, the secretary shall require a written plan of correction. If, after  
8 notice and an opportunity for hearing pursuant to the Kansas administra-  
9 tive procedure act, the secretary finds the community service provider  
10 has failed to carry out the plan of correction within 30 days of the sub-  
11 mission of the plan of correction, the secretary may assess a civil penalty  
12 in an amount not to exceed \$125 per day for each day the provider has  
13 failed to carry out the plan of correction. The secretary may extend the  
14 time in which the provider has to comply with the plan of correction for  
15 good cause. The secretary may require the community service provider  
16 to maintain consumers in place until alternative community services can  
17 be secured with reasonable compensation for actual costs and to remove  
18 the designation as community service provider, except that in the event  
19 the secretary makes written findings of fact that there appears to be a  
20 situation involving imminent danger to the health, safety or welfare of the  
21 person with a developmental disability unless immediate action is taken,  
22 the secretary may issue an emergency order. Such emergency order shall  
23 be subject to the same procedures under K.S.A. 77-536 and amendments  
24 thereto. Upon entry of such an emergency order, the secretary shall  
25 promptly notify the community service provider subject to the order: (1)  
26 The content of the order; (2) the reasons therefor; and (3) that upon  
27 written request within 15 days after service of the order, the matter will  
28 be set for a hearing which shall be conducted in accordance with the  
29 provisions of the Kansas administrative procedure act. If no hearing is  
30 requested and none is ordered by the secretary, the order will remain in  
31 effect until it is modified or vacated by the secretary. If a hearing is  
32 requested or ordered, the secretary, after notice of and opportunity for  
33 hearing to the community service provider subject to the order, by written  
34 findings of fact and conclusions of law, shall vacate, modify or make per-  
35 manent the order.

36 [New] Sec. 8. Nothing in this act shall authorize the secretary to  
37 require a community service provider to make expenditures not in com-  
38 pliance with contracts or agreements entered into by the governing board  
39 of such provider.

40 [New] Sec. 9. Nothing in this act shall create any entitlement to serv-  
41 ices.

42 [New] Sec. 10. The secretary may adopt rules and regulations to  
43 carry out the provisions of this act.



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1 ~~[New Sec. 11. Mental health and retardation services created~~  
2 ~~by the provisions of K.S.A. 75-5308b is hereby abolished and all of~~  
3 ~~the powers, duties and functions of such division are transferred~~  
4 ~~to and conferred and imposed upon mental health and develop-~~  
5 ~~mental disabilities established pursuant section 12 under the su-~~  
6 ~~per vision of the secretary of social and rehabilitation services as~~  
7 ~~part of the department of social and rehabilitation services. The~~  
8 ~~commissioner of mental health and retardation services created by~~  
9 ~~K.S.A. 75-5308b is hereby abolished and all of the powers, duties~~  
10 ~~and functions of such commissioner are transferred to and con-~~  
11 ~~ferred and imposed upon the commissioner of mental health and~~  
12 ~~developmental disabilities appointed pursuant to section 12.~~

13 ~~[New Sec. 12. There is hereby established, within and as a part~~  
14 ~~of the department of social and rehabilitation services and under~~  
15 ~~the supervision of the secretary of social and rehabilitation serv-~~  
16 ~~ices, mental health and developmental disabilities, the head of~~  
17 ~~which shall be the commissioner of mental health and develop-~~  
18 ~~mental disabilities. Under the supervision of the secretary of social~~  
19 ~~and rehabilitation services, the commissioner of mental health and~~  
20 ~~developmental disabilities shall administer mental health and de-~~  
21 ~~velopmental disabilities. The secretary of social and rehabilitation~~  
22 ~~services shall appoint the commissioner of mental health and de-~~  
23 ~~velopmental disabilities, and the commissioner shall serve at the~~  
24 ~~pleasure of the secretary of social and rehabilitation services. The~~  
25 ~~commissioner of mental health and developmental disabilities~~  
26 ~~shall be in the unclassified service of the Kansas civil service act~~  
27 ~~and shall receive an annual salary fixed by the secretary of social~~  
28 ~~and rehabilitation services and approved by the governor.~~

29 ~~[New Sec. 13. (a) All of the powers, duties and functions of the~~  
30 ~~existing mental health and retardation services and the existing~~  
31 ~~commissioner of mental health and retardation services are hereby~~  
32 ~~transferred to and conferred and imposed upon the commissioner~~  
33 ~~of mental health and developmental disabilities created by this~~  
34 ~~order, except as is herein otherwise provided.~~

35 ~~[(b) The commissioner of mental health and developmental~~  
36 ~~disabilities created by this order shall be the successor in every~~  
37 ~~way to the powers, duties and functions of the commissioner of~~  
38 ~~mental health and retardation services in which the same were~~  
39 ~~vested prior to the effective date of this order, except as is herein~~  
40 ~~otherwise provided. Every act performed under the authority of~~  
41 ~~the commissioner of mental health and developmental disabilities~~  
42 ~~created by this order shall be deemed to have the same force and~~  
43 ~~effect as if performed by the commissioner of mental health and~~

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retardation services in which such functions were vested prior to the effective date of this order.

[(c) Whenever the commissioner of mental health and retardation services, or words of like effect, is referred to or designated by a statute, contract or other document, such reference or designation shall be deemed to apply to the commissioner of mental health and developmental disabilities created by this order.

[(d) Whenever the mental health and retardation services, or words of like effect, is referred to or designated by law, contract or other document, such reference shall be deemed to apply to mental health and developmental disabilities created by this order.

[(e) All orders or directives of the commissioner of mental health and retardation services or mental health and retardation services in existence on the effective date of this order shall continue to be effective and shall be deemed to be the orders or directives of the commissioner of mental health and developmental disabilities created by this order until revised, amended, repealed or nullified pursuant to law.

[(f) The commissioner of mental health and developmental disabilities created by this order shall be a continuation of the commissioner of mental health and retardation provided to be appointed under K.S.A. 75-5308b.

[Sec. 14. K.S.A. 1994 Supp. 21-3437 is hereby amended to read as follows: 21-3437. (a) Mistreatment of a dependent adult is knowingly and intentionally committing one or more of the following acts:

[(1) Infliction of physical injury, unreasonable confinement or cruel punishment upon a dependent adult;

[(2) taking unfair advantage of a dependent adult's physical or financial resources for another individual's personal or financial advantage by the use of undue influence, coercion, harassment, duress, deception, false representation or false pretense by a caretaker or another person; or

[(3) omitting or depriving treatment, goods or services by a caretaker or another person which are necessary to maintain physical or mental health of a dependent adult.

[(b) No dependent adult is considered to be mistreated for the sole reason that such dependent adult relies upon or is being furnished treatment by spiritual means through prayer in lieu of medical treatment in accordance with the tenets and practices of a recognized church or religious denomination of which such dependent adult is a member or adherent.

[(c) For purposes of this section: "Dependent adult" means an

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individual 18 years of age or older who is unable to protect their own interest. Such term shall include:

[(1) Any resident of an adult care home including but not limited to those facilities defined by K.S.A. 39-923 and amendments thereto;

[(2) any adult cared for in a private residence;

[(3) any individual kept, cared for, treated, boarded or otherwise accommodated in a medical care facility;

[(4) any individual with mental retardation or a developmental disability receiving services through a community mental retardation facility or residential facility licensed under K.S.A. 75-3307b and amendments thereto; or

[(5) any individual with a developmental disability receiving services provided by a community service provider as provided in section 1 et seq. and amendments thereto; or

[(6) any individual kept, cared for, treated, boarded or otherwise accommodated in a state psychiatric hospital or state institution for the mentally retarded.

[(d) Mistreatment of a dependent adult as defined in subsection (a)(1) is a severity level 6, person felony. Mistreatment of a dependent adult as defined in subsection (a)(2) and (a)(3) is a class A person misdemeanor.

~~[Sec. 15. K.S.A. 39-1607 is hereby amended to read as follows: 39-1607. On or before March 1, 1991, the secretary shall transfer All those powers, duties, functions of adult services, which are were part of the adult services community and day living program, or similar programs prior to March 1, 1991, and which provide mental health services to persons, including persons residing in intermediate care facilities that provide mental health services, to are powers, duties and functions of mental health and retardation services developmental disabilities.~~

~~[Sec. 16. K.S.A. 65-4043 is hereby amended to read as follows: 65-4043. The commissioner of mental health and retardation services developmental disabilities may transfer any patient from any institution under the control of such commissioner to any other such institution whenever the commissioner deems it to be in the best interest of the patient.~~

~~[When any proposed patient or involuntary patient has been ordered to any treatment facility or state institution on referral or for care or treatment, the head of the treatment facility or state institution shall discharge such patient when such patient is no longer in need of care and treatment.~~

~~[The head of the treatment facility or state institution may re-~~

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1 ~~release any patient on convalescent status when the head of the treat-~~  
2 ~~ment facility or state institution believes that such release is in the~~  
3 ~~best interest of the patient.~~

4 ~~[The treatment facility or state institution shall continue to have~~  
5 ~~the responsibility to formulate a plan of treatment for the mental~~  
6 ~~well-being of any patient released on convalescent status. Such~~  
7 ~~responsibility shall also include a plan of care or treatment and the~~  
8 ~~place where it shall be received, notwithstanding any law author-~~  
9 ~~izing the patient or the patient's guardian, if any, to determine~~  
10 ~~such place. The head of the treatment facility or state institution~~  
11 ~~shall have the authority to change the plan or place of care or~~  
12 ~~treatment whenever the head of the treatment facility or state in-~~  
13 ~~stitution deems it necessary for the welfare of the patient. Such~~  
14 ~~authority shall include the right to revoke the release on conva-~~  
15 ~~lescent status and to order the patient readmitted to the treatment~~  
16 ~~facility or state institution, as applicable. The head of the treatment~~  
17 ~~facility or state institution may authorize and order any law en-~~  
18 ~~forcement officer or other person to take into custody and trans-~~  
19 ~~port the patient to a treatment facility, state institution or other~~  
20 ~~facility for care or treatment. Prior to the end of the first year on~~  
21 ~~convalescent status, and not less often than annually thereafter~~  
22 ~~while an involuntary patient is on convalescent status, the head of~~  
23 ~~the treatment facility or state institution shall reexamine the facts~~  
24 ~~relating to the care or treatment of the involuntary patient on con-~~  
25 ~~valescent status.~~

26 ~~[Nothing in this section shall be construed to amend or modify~~  
27 ~~or repeal any law relating to the confinement of persons charged~~  
28 ~~with or convicted of a criminal offense.~~

29 ~~[Sec. 17. K.S.A. 65-4411 is hereby amended to read as follows:~~  
30 ~~65-4411. K.S.A. 65-4411 to 65-4415, inclusive, and amendments~~  
31 ~~thereto shall be known and may be cited as the Kansas community~~  
32 ~~mental retardation facilities *developmental disability organizations* assis-~~  
33 ~~tance act.~~

34 ~~[Sec. 18. K.S.A. 65-4412 is hereby amended to read as follows:~~  
35 ~~65-4412. (a) "Community mental retardation facilities" means: (1)~~  
36 ~~Any community facility for the mentally retarded *developmental dis-*~~  
37 ~~*ability organization* organized pursuant to the provisions of K.S.A. 19-~~  
38 ~~4001 to 19-4015, inclusive, and amendments thereto, and licensed~~  
39 ~~in accordance with the provisions of K.S.A. 75-3307b, and amend-~~  
40 ~~ments thereto; or (2) any mental retardation governing board~~  
41 ~~which contracts with a nonprofit corporation to provide services~~  
~~for the mentally retarded.~~

~~[(b) "Secretary" means secretary of social and rehabilitation~~

services.

2 [Sec. 19. K.S.A. 65-4413 is hereby amended to read as follows;  
3 65-4413. (a) For the purpose of insuring that adequate community  
4 mental retardation services are available to all inhabitants of Kan-  
5 sas, the state shall participate in the financing of community mental  
6 retardation facilities developmental disability organizations in the man-  
7 ner provided by this section.

8 [(b) Subject to the provisions of appropriations acts and the  
9 provisions of K.S.A. 65-4414 and amendments thereto, the secre-  
10 tary shall make grants to community mental retardation facilities de-  
11 velopmental disability organizations based on full-time equivalent cli-  
12 ents served and per diem amounts per client as provided in this  
13 section. The secretary, in accordance with the provisions of this  
14 section, shall adopt rules and regulations (1) defining full-time  
15 equivalent clients and prescribing the method of computing full-  
16 time equivalent clients and (2) establishing statewide per diem  
17 amounts per client for the purposes of determining grants to com-  
18 munity mental retardation facilities. A client accepted for a pro-  
19 gram by a facility on and after July 1, 1987 community developmental  
20 disability organization on or after the effective date of this act, shall con-  
21 stitute a full-time equivalent client only if the client was accepted  
22 by the facility on a first-come, first-serve basis in order of the time  
23 at which an application for admission was made to such facility on  
24 behalf of the client, except that a client accepted for a program by  
25 a facility community developmental disability organization on other than  
26 a first-come, first-serve basis because of a family crisis occasioned  
27 by family circumstances shall constitute a full-time equivalent cli-  
28 ent. The secretary shall adopt rules and regulations to define the  
29 parameters for agency boards of directors to follow in identifying  
30 "family crisis occasioned by family circumstances." Such rules and  
31 regulations shall require that each agency board of directors es-  
32 tablish standards and guidelines, within parameters defined by the  
33 rules and regulations, which are consistent with the needs of cli-  
34 ents and their families. The standards and guidelines established  
35 by the agency board of directors shall specify to the extent known  
36 the types of family crises most likely to necessitate admission to a  
37 facility community developmental disability organization and shall es-  
38 tablish criteria for determining the appropriateness of such ad-  
39 mission. In addition the rules and regulations shall establish pro-  
40 cedures for review by the secretary of the appropriateness of any  
41 such admission.

[(c) The secretary shall make grant payments each calendar  
quarter. Subject to the provisions of K.S.A. 65-4414 and amend-

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ments thereto: (1) The first year of per diem payments made under  
this section shall be based on the number of clients served during  
the base calendar year 1983; and (2) payments in subsequent years  
shall be based on actual clients served during the calendar year  
immediately preceding the year in which such grant payments are  
to be made. In the event that sufficient moneys to pay to all com-  
munity mental retardation facilities developmental disability organiza-  
tions the full amount of grant payments determined in accordance  
with the number of actual clients served thereby and the current  
per diem amounts per client for any calendar quarter have not  
been appropriated or are not available, the entire amount availa-  
ble such calendar quarter for grant payments shall be prorated by  
the secretary among all the community mental retardation facilities  
developmental disability organizations applying for such grant pay-  
ments in proportion to the amount each such community mental  
retardation facility developmental disability organization would have re-  
ceived if sufficient moneys had been appropriated and available  
therefor, subject to the provisions of K.S.A. 65-4414 and amend-  
ments thereto. A client funded by special state funding shall not  
constitute a client for purposes of per diem funding under this  
section.

[(d) The secretary shall adopt rules and regulations for the ad-  
ministration of the provisions of the Kansas community mental re-  
tardation facilities developmental disability organizations assistance act.

[Sec. 20. K.S.A. 65-4414 is hereby amended to read as follows:  
65-4414. During each fiscal year commencing after June 30, 1986  
1996, each community mental retardation facility developmental disa-  
bility organization which was eligible for grant payments under  
K.S.A. 65-4413 and which received assistance under the provisions  
of K.S.A. 65-4401 to 65-4408, inclusive, for the fiscal year ending  
June 30, 1986 1996, shall receive a total amount of grant payments  
under K.S.A. 65-4413 for such fiscal year in an amount which is  
not less than the total amount of assistance earned by such com-  
munity mental retardation facility developmental disability organization  
under the provisions of K.S.A. 65-4401 to 65-4408, inclusive, for  
the fiscal year ending June 30, 1986 1996. In the event that suffi-  
cient funds are not appropriated to pay all such community mental  
retardation facilities developmental disability organizations, which are  
applying for grants, the minimum amounts which such facilities  
community developmental disability organizations are eligible to re-  
ceive under this section, the secretary shall prorate the entire  
amount appropriated for grants among those community mental  
retardation facilities developmental disability organizations which are

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1 applying for grants and which are eligible under this section, in  
2 proportion to the amount each such community mental retardation  
3 facility developmental disability organization received during the base  
4 year ending June 30, 1986 1996.

5 [Sec. 21. K.S.A. 65-4415 is hereby amended to read as follows:

6 65-4415. (a) The secretary upon determination that a program in-  
7 cluded in the proposed budget of a community mental retardation  
8 facility developmental disability organization (1) is a new program not  
9 included in previous budgets of such community mental retarda-  
10 tion center and (2) duplicates an existing program which is ade-  
11 quately serving the geographic area served by such community  
12 mental retardation facility developmental disability organization, may  
13 subtract the full-time equivalent clients served by the program  
14 from the total full-time equivalent computation for purposes of  
15 granting financial assistance under the Kansas community mental  
16 retardation facilities developmental disability organization assistance act  
17 or may require such community mental retardation facility develop-  
18 mental disability organization to purchase the service from or oth-  
19 erwise cooperate with such other program.

20 [(b) The secretary shall administer the provisions of the Kansas  
21 community mental retardation facilities developmental disability organ-  
22 izations assistance act. In administering the provisions of the Kan-  
23 sas community mental retardation facilities developmental disability or-  
24 ganizations assistance act, the secretary shall review the budgets  
25 and expenditures of the facilities community developmental disability  
26 organization, from time to time during the fiscal year, and may with-  
27 draw funds from any facility community developmental disability or-  
28 ganization which is not being administered substantially in accord-  
29 ance with the provisions of the annual budget submitted to the  
30 secretary.

31 [(c) The secretary shall provide consultative staff service to  
32 community mental retardation facilities developmental disability organ-  
33 izations to assist in ascertaining local needs, in obtaining federal  
34 funds and assistance and in the delivery of mental retardation devel-  
35 opmental disability services at the local level.

36 [(d) In the event any community mental retardation facility devel-  
37 opmental disability organization is paid more than it is entitled to  
38 receive under any distribution made under the Kansas community  
39 mental retardation facilities developmental disability organizations assis-  
40 tance act, the secretary shall notify the governing board of the  
41 community mental retardation facility developmental disability organi-  
42 zation of the amount of such overpayment, and such governing  
43 board shall remit the same to the secretary. The secretary shall

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2 remit any moneys so received to the state treasurer, and the state  
3 treasurer shall deposit the entire amount of such remittance in the  
4 state treasury. If any such governing board fails so to remit, the  
5 secretary shall deduct the excess amount so paid from future pay-  
6 ments becoming due to such community mental retardation facility  
7 *developmental disability organization.*

8 [(e) In the event any community mental retardation facility devel-  
9 opmental disability organization is paid less than the amount to which  
10 it is entitled under any distribution made under the Kansas com-  
11 munity mental retardation facilities *developmental disability organiza-*  
12 *tions* assistance act, the secretary shall pay the additional amount  
13 due at any time within the fiscal year in which the underpayment  
14 was made or within 60 days after the end of such year.

15 [Sec. 22. K.S.A. 65-5218 is hereby amended to read as follows:  
16 65-5218. (a) The commissioner of mental health and retardation  
17 services *developmental disabilities* may transfer any patient from any  
18 institution under the control of such commissioner to any other  
19 such institution whenever the commissioner deems it to be in the  
20 best interest of the patient.

21 [(b) When any proposed patient or involuntary patient has  
22 been ordered to any treatment facility or state institution on re-  
23 ferral or for care or treatment, the head of the treatment facility  
24 or state institution shall discharge such patient when such patient  
25 is no longer in need of care or treatment.

26 [(c) The head of the treatment facility or state institution may  
27 release any patient on convalescent status when the head of the  
28 treatment facility or state institution believes that such release is  
29 in the best interest of the patient.

30 [The treatment facility or state institution shall continue to have  
31 the responsibility to formulate a plan of treatment for the well-  
32 being of any patient released on convalescent status. Such respon-  
33 sibility shall also include a plan of care or treatment and the place  
34 where it shall be received, notwithstanding any law authorizing  
35 the patient or the patient's guardian, if any, to determine such  
36 place. The head of the treatment facility or state institution shall  
37 have the authority to change the plan or place of care or treatment  
38 whenever the head of the treatment facility or state institution  
39 deems it necessary for the welfare of the patient. Such authority  
40 shall include the right to revoke the release on convalescent status  
41 and to order the patient readmitted to the treatment facility or  
42 state institution, as applicable. The head of the treatment facility  
43 or state institution may authorize and order any law enforcement  
44 officer or other person to take into custody and transport the pa-



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~~tient to a treatment facility, state institution or other facility for care or treatment. Prior to the end of the first year on convalescent status, and not less often than annually thereafter while an involuntary patient is on convalescent status, the head of the treatment facility or state institution shall reexamine the facts relating to the care or treatment of the involuntary patient on convalescent status.~~

~~[(d) Nothing in this section shall be construed to amend or modify or repeal any law relating to the confinement of persons charged with or convicted of a criminal offense.]~~

12

keep

[Sec. 23. K.S.A. 65-5601 is hereby amended to read as follows: 65-5601. As used in K.S.A. 65-5601 to 65-5605, inclusive:

[(a) "Patient" means a person who consults or is examined or interviewed by treatment personnel.

[(b) "Treatment personnel" means any employee of a treatment facility who receives a confidential communication from a patient while engaged in the diagnosis or treatment of a mental, alcoholic, drug dependency or emotional condition, if such communication was not intended to be disclosed to third persons.

[(c) "Ancillary personnel" means any employee of a treatment facility who is not included in the definition of treatment personnel.

[(d) "Treatment facility" means a community mental health center, community mental retardation facility service provider, psychiatric hospital and state institution for the mentally retarded.

[(e) "Head of the treatment facility" means the administrative director of a treatment facility or the designee of the administrative director.

[(f) "Community mental health center" means a mental health clinic or community mental health center licensed under K.S.A. 75-3307b and amendments thereto.

[(g) "Psychiatric hospital" means Larned state hospital, Osawatomie state hospital, Rainbow mental health facility, Topeka state hospital and hospitals licensed under K.S.A. 75-3307b and amendments thereto.

[(h) "State institution for the mentally retarded" means Norton state hospital, Winfield state hospital and training center, Parsons state hospital and training center and the Kansas neurological institute.

[(i) "Community mental retardation facility service provider" means: (1) A community facility for the mentally retarded organized pursuant to the provisions of K.S.A. 19-4001 to 19-4015, inclusive, and amendments thereto; and licensed in accordance with the provisions of K.S.A. 75-3307b, and amendments thereto; service provider as provided

facility for the mentally retarded organized pursuant to the provisions of K.S.A. 19-4001 to 19-4015, inclusive, and amendments thereto, and licensed in accordance with the provisions of K.S.A. 75-3307b and amendments thereto;

(2) community

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in section 1 et seq. and amendments thereto; or ~~(2)~~ a nonprofit corporation which provides services for the mentally retarded pursuant to a contract with a mental retardation governing board.

(3)

[Sec. 24. K.S.A. 74-5502 is hereby amended to read as follows: 74-5502. (a) The state planning council shall:

By striking all in sections 24 through 39

[(1) Study the problems of prevention, education, rehabilitation and other programs affecting the general welfare of the developmentally disabled.

[(2) Monitor, review and evaluate, at least annually, the implementation of the state plan for developmental disabilities.

[(3) Review and comment, to the maximum extent feasible, on all state plans in the state which relate to programs affecting persons with developmental disabilities.

[(4) Submit to the secretary of health, education and welfare, through the governor, such periodic reports on its activities as the secretary of health, education and welfare may reasonably request and keep such records and afford such access thereto as the secretary of health, education and welfare finds necessary to verify such reports. In accordance with federal laws, the state plan for developmental disabilities shall be prepared jointly by the division of mental health and ~~retardation services~~ developmental disabilities of the department of social and rehabilitation services and the state planning council.

[(5) Study the various state programs for the developmentally disabled and shall have power to make suggestions and recommendations to the various state departments for the coordination and improvements of such programs.

[(b) The council may make proposed legislative recommendations having as a function the more efficient, economic and effective realization of intent, purpose and goal of the various programs for the developmentally disabled.

[(c) Each state agency represented by membership on the council is hereby authorized to furnish such information, data, reports and statistics requested by the council.

[Sec. 25. K.S.A. 74-5505 is hereby amended to read as follows: 74-5505. The division of mental health and ~~retardation services~~ developmental disabilities of the department of social and rehabilitation services is hereby designated as the agency to receive and administer federal funds under the federal rehabilitation act of 1973 (29 U.S.C. 701 et seq.), as amended. The state plan for developmental disabilities shall provide for such fiscal control and fund accounting procedures as may be necessary to assure the proper disbursement of and accounting for funds paid to the state under

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or others shall be so transferred to ~~said such~~ Kansas soldiers' home, and no such patient shall be so transferred if such transfer will deny admission to persons entitled to admission under K.S.A. 76-1908 and rules and regulations promulgated thereunder. Persons so transferred shall not be considered as members of the Kansas soldiers' home but shall be considered as patients therein.

(b) All of the laws, rules and regulations relating to patients in the above-specified state hospitals and mental health facility shall be applicable to such patients so transferred insofar as the same can be made applicable. Any patient so transferred who is found to be or shall become such a mentally ill person, in the opinion of the ~~director~~ commissioner of mental health and ~~retardation services~~ developmental disabilities, that because of his or her such patient's illness he or she such patient is likely to injure himself, herself ~~themselves~~ or others or who is determined to need additional psychiatric treatment, shall be retransferred by the superintendent of the Kansas soldiers' home, with the approval of the ~~director~~ commissioner of mental health and ~~retardation services~~ developmental disabilities, to the institution from whence he or she the patient was originally transferred.

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[Sec. 40: ~~K.S.A. 39-1607, 65-4043, 65-4411, 65-4412, 65-4413, 65-4414, 65-4415, 65-5218, 65-5601, 74-5502, 74-5505, 74-6703, 75-3303, 75-3303a, 75-3314, 75-3328, 76-12a01, 76-12a06, 76-12a08, 76-12b10, 76-17a10 and 76-1936 and K.S.A. 1994 Supp. 21-3734, 75-2935, 75-3717 and 76-12a04 are hereby repealed.~~]

14

Sec. 41 [41]. This act shall take effect and be in force from and after January 1, 1996, and its publication in the statute book.

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