

MINUTES OF THE HOUSE SELECT COMMITTEE ON DEVELOPMENTAL DISABILITIES.

The meeting was called to order by Chairperson Jo Ann Pottorff at 3:30 p.m. on March 6, 1995 in Room 529-S of the Capitol.

All members were present:

Committee staff present: Patricia Pierron, Legislative Research Department
Emalene Correll, Legislative Research Department
Gordon Self, Revisor of Statutes
Marian F. Holeman, Committee Secretary

Conferees appearing before the committee: None

Others attending: See attached list

Chairman Pottorff advised that no action could be taken on the bill today. Representative Gerald Geringer presented the sub-committee report on proposed **Substitute for HB-2458** (Attachment 1) A new fiscal note will be requested for the substitute bill. (Note received March 17, 1995) (Attachment 2)

Report and discussion on each page and section of the bill followed. It was noted that throughout the bill inclusion of the language "subject to appropriation" and "not an entitlement" generated a significant change in potential fiscal impact. Section 4, (2) (d) is seen as a critical section in formulating state policy. Section 7 was rewritten to furnish a delicately balanced segment designed to provide some emergency and interim steps for SRS.

Representative O'Neal attended the meeting on behalf of Hutchinson Heights to request some protection for this group. They believe a grandfather clause would protect its designation. He offered to provide any additional information committee might require. SRS representatives met with Hutchinson Heights staff and families this past Saturday to explore options. Regardless of what the state does, federal agreement is required to change funding and/or designation for Hutchinson Heights.

Rose Alderson, Executive Director, Hutchinson Heights spoke to the committee explaining why they requested Home & Community Based Services (HCBS) funding, and how they have been fitted into Intermediate Care Facility/Mental Retardation (ICF/MR) when they really do not have an MR clientele. At start up SRS created a category for them. They were to be reevaluated and reclassified. Virginia Hulet spoke regarding origin of Hutchinson Heights and the 8-1/2 years they have been in this ICF/MR category without any reclassification. None of the Hutchinson Heights discussants presented written testimony.

Committee members concurred in the need for resolution of the Hutchinson Heights issue.

Next meeting will be Wednesday, April 8, 1995 in Room 423-S.

The meeting adjourned at 5:15 p.m.

HOUSE SELECT COMMITTEE ON DEVELOPMENTAL DISABILITIES COMMITTEE GUEST LIST

DATE: March 6, 1995

NAME	REPRESENTING
Shannon Jones	SILCK
Josie Torres	Families Together, Inc.
Ann Henning Pinson	KS ASSN OF SEVERE BDS
Jane Rhys	KS Council on Dev. Disabilities
Robert E. Seels	The Arc of KANSAS
Chika Ogburn	RCIL
Coppy D. Vay	SPS
Lina McDonald	KACIL
Virginia H. Hulst	Hutchinson, KS.
Doug Bowman	Coordinating Council
Martha Holzsmull	KARF
Pepe Laine	KARF
James Melstred	Presbyterian Men of Mid-America
Bob Anderson	Hutchinson Heights
Mark DeMue	So. Co. M. R. Center

HOUSE BILL No. 2458

By Select Committee on Developmental Disabilities

2-10

HSC on Developmental Disabilities
3-6-95
Attachment 1

9 AN ACT enacting the developmental disabilities reform act; prescribing
10 certain powers, duties and functions for the secretary of social and
11 rehabilitation services.

12
13 *Be it enacted by the Legislature of the State of Kansas:*

14 ~~Section 1.~~ It is the ~~purpose of this act~~ to assist persons who have a
15 developmental disability to have:

16 (a) Services and supports which ~~present~~ opportunities to increase the
17 independence and productivity of ~~such persons~~ and the integration and
18 inclusion of ~~such persons~~ into the community;

19 (b) access to ~~an array~~ of services and supports appropriate to such
20 persons ~~as individuals~~; and

21 (c) the same ~~opportunities~~, dignity and respect as persons who do not
22 have a developmental disability.

23 ~~Sec. 2.~~ As used in this act:

24 (a) "Adaptive behavior" means the effectiveness or degree with which
25 an individual meets the standards of personal independence and social
26 responsibility expected of that person's age, cultural group and commu-
27 nity.

28 (b) "Affiliate" means an entity or person ~~who~~ contracts with a com-
29 munity developmental disabilities organization.

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

33 (d) "Community developmental disability organizations" means an
34 entity ~~that~~ is organized pursuant to K.S.A. 19-4001 through 19-4015 and
35 amendments thereto ~~and is organized to~~ (c)

36 (1) ~~Directly or by subcontract serve as points of application or referral~~
37 ~~for services and to assist all persons with a developmental disability to~~
38 ~~have access to and an opportunity to participate in community services;~~

39 (2) ~~provide either directly or by subcontract, services to persons with~~
40 ~~a developmental disability. Contracts shall be with existing community~~
41 ~~services providers whenever appropriate, and~~

42 (3) ~~provide directly or by subcontract referral services to persons with~~
43 ~~a developmental disability whose particular needs can be met in the com-~~

New Section 1. The provisions of this act shall be known and may be
cited as the developmental disabilities reform act.
Sec. 2.

policy of this state

allow persons

their

of choice

a range

that meets standards set out in rules and regulations adopted by the
secretary relating to the provision of services and that

relating to

3

1

1-1

community or through other government agencies.

2 (e) "Community services provider" means a community develop-
3 mental disability organization or affiliate thereof.

4 (f) "Developmental disability" means:

5 (1) Mental retardation; or
6 (2) a severe, chronic disability, ~~other than mental retardation or men-~~
7 ~~tal illness~~, which:

8 (A) Is attributable to a mental or physical impairment ~~other than a~~
9 ~~mental or physical impairment caused solely by mental illness;~~

10 (B) ~~is likely to continue indefinitely; and~~

11 ~~(C) results in: (i) in the case of a person under three years of age, at~~
12 ~~least one developmental delay; or (ii) in the case of a person three years~~

13 of age or older, a substantial limitation in three or more of the following
14 areas of major life activity, ~~as appropriate for the person's age~~: Self-care,
15 receptive and expressive language development and use, learning, mo-
16 bility, self-direction, capacity for independent living and economic self-
17 sufficiency; ~~or~~

18 ~~(3) a condition which has received a dual diagnosis of mental retar-~~
19 ~~dation and mental illness.~~

20 (g) "Institution" means state institutions for the mentally retarded as
21 defined by subsection (c) of K.S.A. 76-12b01 and amendments thereto
22 or intermediate care facility for the mentally retarded of 15 beds or more
23 as defined by subsection (p) of K.A.R. 30-10-200 and amendments
24 thereto.

25 (h) "Mental retardation" means substantial limitations in present
26 functioning that is manifested during the period from birth to age 18 ^{years} and
27 ~~this~~ is characterized by significantly subaverage intellectual functioning
28 existing concurrently with deficits in adaptive behavior including related
29 limitations in two or more of the following applicable adaptive skill areas:
30 Communication, self-care, home living, social skills, community use, self-
31 direction, health and safety, functional academics, leisure and work; and
32 (i) "Secretary" means the secretary of social and rehabilitation serv-

33 ices.

34 Sec. ~~31~~ (a) Except as otherwise specifically provided in this act, the
35 secretary of social and rehabilitation services shall establish, implement,
36 administer and maintain the provisions of the developmental disabilities
37 reform act in accordance with the following:

38 (1) ~~That subject to appropriations of federal, state and local govern-~~
39 ~~ment funds, persons with a developmental disability shall be provided~~
40 assistance to ~~have~~ food, housing, clothing and medical care, protection
41 from abuse, neglect and exploitation ~~and an array of services and supports~~
which assist in the determination of individual needs; and

(2) ~~that persons with developmental disabilities will receive assistance~~

service

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)

(D)

five

functioning

and adapting

(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 severely emotionally
disturbed or seriously or persistently mentally ill or have disabilities
solely as a result of the infirmities of aging.

institution

nine

and subject to appropriations of federal, state and local government funds,

, after consultation with representatives of community developmental
disability organizations, community service providers, families and
consumer advocates, shall implement and administer

policies. Persons with developmental disabilities shall

a range

obtain

;

1 in determining their needs, ~~be provided information about all service~~
 2 options available to meet those needs, ~~have coordination of services de-~~
 3 ~~livered, be assisted and supported in living with their families or inde-~~
 4 ~~pently, assisted in finding transportation to support access to the com-~~
 5 ~~munity, and individually planned habilitation, education, training,~~ receives
 6 employment and recreation subject to supports and services available in
 7 the community of their choice.

8 (b) To accomplish the policies set forth in subsection (a), the secre-
 9 tary of ~~social and rehabilitation services~~ shall, subject to the provisions of shall
 10 appropriation acts, annually propose and implement a plan including, but
 11 not limited to, financing thereof which will provide for an organized net-
 12 work of community services for persons with developmental disabilities, of
 13 maximize the availability federal resources to supplement state and local
 14 funding for such systems and reduce reliance on separate, segregated
 15 settings in institutions or the community for persons with developmental
 16 disabilities.

17 (c) The secretary shall report to the legislature the number of persons persons
 18 with developmental disabilities ~~and the number of families~~ eligible to comprehensive
 19 receive community services and shall make a progress report on the im-
 20 plementation of the annual plans and the progress made to accomplish a
 21 ~~full service~~ community services system for ~~person~~ with developmental
 22 disabilities.

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

35 (e) Subject to the provisions of this act and appropriations acts, the
 36 secretary shall administer and disburse funds to each community devel-
 37 opmental disability organization for the coordination and provision of
 38 community services.

39 (f) The secretary shall establish procedures and systems to evaluate
 40 the results and outcomes of the implementation of this act to ensure the
 attainment of maximum quality and efficient delivery of community ser-
 41 vices.

43 Sec. 41 ~~In the administration of the developmental disabilities reform~~

(a) In addition to any other power and duty prescribed by law, a community developmental disability organization shall have the power and duty to:

(1) Directly or by subcontract serve as a 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) organizes 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, interagency 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) ensures 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.

1 act and implementing plans, persons with developmental disabilities shall
 2 have access to an array of community services through the provision of
 3 services in local communities whenever possible, with primary supervi-
 4 sion for the provision of such services with community developmental
 5 disability organizations.

6 Sec. 52. To accomplish a full service community services system there
 7 shall be:

8 (a) A system of adequate and reasonable cost reimbursement for the
 9 delivery of community services that:

10 (1) For persons moving from institutions into community services,
 11 directs funding to follow in an amount not less than that which is required
 12 to reimburse community services providers for services as set forth in
 13 such person's essential lifestyle plan, for a period not less than two years
 14 from the date of that person's departure from the institution, after which
 15 the funding for such person will be provided through the reimbursement
 16 system for other persons with developmental disabilities;

17 (2) consolidates federal and state funding sources into a single rate
 18 structure;

19 (3) (A) establishes a community services funding commission that will
 20 develop, monitor and maintain rate structures for community services and
 21 services delivered by institutions; or

22 (B) requires an independent, professional review of the rate struc-
 23 tures on a biennial basis resulting in a recommendation to the legislature
 24 regarding rate adjustments; and

25 (4) such system shall be adequate to support:

26 (A) A system of employee compensation and benefits comparable to
 27 state employment;

28 (B) training and technical support to attract and retain qualified em-
 29 ployees;

30 (C) a quality assurance process which is responsive to consumers'
 31 needs and which maintains the standards of quality service;

32 (D) coverage under K.S.A. 75-6101 through 75-6119 and amend-
 33 ments thereto; and

34 (E) program management and coordination responsibilities;

35 (b) a system of accountability that:

36 (1) Establishes community services standards which insure effective
 37 service delivery, fiscal accountability and networking cooperation;

38 (2) provides for a recognition of achievement and maintenance of
 39 community services standards and acknowledgment of the accomplish-
 40 ment of national accreditation as equivalent to achievement of community
 41 services standards; and

42 (3) conditions participation as a community services provider upon
 43 the achievement and maintenance of such standards; and

carry out the provisions of this act, the secretary

establish in consultation with representatives of community developmental
 disability organizations and affiliates thereof, families and consumer
 advocates

funding or

the

service

plan for transfer from the institution to community services including
 expenses of relocation and initiation of services

. Such recommendation shall be adequate to support: (A) A system of
 employee compensation competitive with local conditions; (B) training and
 technical support to attract and retain qualified employees; (C) a quality
 assurance process which is responsive to consumers' needs and which
 maintains the standards of quality service; (D) coverage under K.S.A.
 75-6101 through 75-6119 and amendments thereto; and (E) program management
 and coordination responsibilities;

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

1 (c) a system of contracting that ~~is the primary method for imple-~~
 2 ~~menting the provisions of this act that:~~
 3 (1) Authorizes open and equitable negotiation between contracting
 4 parties or their designated agent or agents;
 5 (2) authorizes arbitration by an independent entity in the event of
 6 contract disputes;
 7 (3) requires achievement and maintenance of community services
 8 standards by community services providers;
 9 (4) includes compensation for community services which meet the
 10 individualized needs of persons with developmental disabilities for com-
 11 munity services in the areas of: (A) Work, (B) living in the community,
 12 and (C) individualized supports and services; and
 13 (5) requires community developmental disability organizations to
 14 contract with those qualified affiliates from whom a person with a devel-
 15 opmental disability chooses services.

7 16 ~~Sec. 6. Whenever the secretary of social and rehabilitation services~~
 17 ~~finds a community developmental disability organization to have failed to~~
 18 ~~comply with the requirements, standards or rules and regulations estab-~~
 19 ~~lished pursuant to this act or any other provision of law, the secretary~~
 20 ~~shall have the power to inspect and review the operations of the com-~~
 21 ~~munity developmental disability organization, issue correction orders that~~
 22 ~~subjects the community developmental disability organization to a pro-~~
 23 ~~hibitory period of enhanced review by the secretary to assure compli-~~
 24 ~~ance with the order, and suspend the community developmental disability~~
 25 ~~organization and removal of the organization's board of directors and the~~
 26 ~~power to file an application with the district court for an order appointing~~
 27 ~~the secretary as receiver to operate the community developmental disa-~~
 28 ~~bility organization.~~

8 29 ~~Sec. 7. Nothing in this act shall authorize the secretary or the de-~~
 30 ~~partment of social and rehabilitation services to require that community~~
 31 ~~developmental disability organizations make expenditures other than ex-~~
 32 ~~penditures approved for the community developmental disability organ-~~
 33 ~~ization by the governing board of the organization.~~

11 34 ~~Sec. 8. This act shall take effect and be in force from and after its~~
 35 ~~publication in the statute book.~~

chosen by the parties to the contract
 and if arbitration is not completed prior to end of the existing contract
 authorizes an extension of time of such existing contract or entering into
 a temporary contract shall be permitted

service provider has
 service provider, identify deficiencies and require a written plan of
 correction. If, after notice and an opportunity for hearing pursuant to the
 Kansas administrative procedure act, the secretary finds the community
 service provider has failed to carry out the plan of correction within 30
 days for the submission of the plan of correction, the secretary may assess
 a civil penalty in an amount not to exceed \$125 per day for each day the
 provider has failed to carry out the plan of correction. The secretary may
 extend the time in which the provider has to comply with the plan of
 correction for good cause. The secretary may require the community service
 provider to maintain consumers in place until alternative community
 services can be secured with reasonable compensation for actual costs and
 to remove the designation as community service provider, except that in the
 event the secretary makes written findings of fact that there appears to be
 a situation involving imminent danger to the health, safety or welfare of
 the person with a developmental disability unless immediate action is
 taken, the secretary may issue an emergency order. Such emergency order
 shall be subject to the same procedures under K.S.A. 77-536 and amendments
 thereto. Upon entry of such an emergency order, the secretary shall
 promptly notify the community service provider subject to the order: (1)
 The content of the order; (2) the reasons therefor; and (3) that upon
 written request within 15 days after service of the order, the matter will
 be set for a hearing which shall be conducted in accordance with the
 provisions of the Kansas administrative procedure act. If no hearing is
 requested and none is ordered by the secretary, the order will remain in
 effect until it is modified or vacated by the secretary. If a hearing is
 requested or ordered, the secretary, after notice of and opportunity for
 hearing to the community service provider subject to the order, shall by
 written findings of fact and conclusions of law vacate, modify or make
 permanent the order.

a community service provider to
 not in compliance with contracts or agreements entered into
 of such provider

New Sec. 9. Nothing in this act shall create any entitlement to
 services.
 New Sec. 10. The secretary may adopt rules and regulations to carry
 out the provisions of this act.

STATE OF KANSAS



DIVISION OF THE BUDGET
Room 152-E
State Capitol Building
Topeka, Kansas 66612-1504
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FAX (913) 296-0231

Bill Graves
Governor

Gloria M. Timmer
Director

March 17, 1995

The Honorable Jo Ann Pottorff, Chairperson
House Select Committee on Developmental Disabilities
Statehouse, Room 183-W
Topeka, Kansas 66612

Dear Representative Pottorff:

SUBJECT: Fiscal Note for Substitute for HB 2458 by House
Select Committee on Developmental Disabilities

In accordance with KSA 75-3715a, the following fiscal note concerning Substitute for HB 2458 is respectfully submitted to your committee.

Substitute for HB 2458 also creates a Developmental Disabilities Reform Act. For the purposes of the bill, the community mental retardation centers are defined as community developmental disability organizations. The bill defines standards and requirements for the services provided to clients with disabilities by these organizations and authorizes the Secretary of Social and Rehabilitation Services to enforce its provisions.

Subject to appropriations of federal, state and local government funds, Section 4 of the bill would require the Secretary of Social and Rehabilitation Services to provide persons with developmental disabilities with food, housing, clothing, medical care and protection from abuse, neglect and exploitation. The bill would also require the Secretary to aid persons with developmental disabilities in determining their needs and provide them with options, coordination of delivered services, assisted living and transportation to services in the community. The bill also assigns community developmental disability organizations to supervise services delivered in the community.

Section 5 of the bill would designate the community developmental disabilities organizations as the single point of

*House Select Committee on
Developmental Disabilities
3-6-95
Attachment 2*

The Honorable Jo Ann Pottorff, Chairperson

March 17, 1995

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access for services for persons with developmental disabilities. The bill also allows the community developmental disability organizations to organize community councils, to provide information about affiliates and referral services and to ensure that the affiliates have the option to review referrals and waiting lists.

The Secretary of Social and Rehabilitation Services under Section 6 would establish an organized network of community services to reduce the state's reliance on separate settings in institutions or the community and provide an adequate and reasonable funding system that meets the criteria established in the bill. The Secretary would also establish systems for contracting and quality assurance.

Section 7 of the bill gives the Secretary authority to monitor provider compliance and to correct any deficiencies. If a provider is found not to be in compliance, the involved parties would be required to mediate the issue. Sections 8 of the bill would prevent the Secretary from requiring a provider to make expenditures which do not comply with the contracts or agreements set by their governing boards. Section 9 of the bill states that nothing in the act creates an entitlement to services.

Estimated State Fiscal Impact				
	FY 1995 SGF	FY 1995 All Funds	FY 1996 SGF	FY 1996 All Funds
Revenue	--	--	--	--
Expenditure	--	--	\$1,707,882	\$2,492,882
FTE Pos.	--	--	--	7.0

Substitute for HB 2458 creates new services not required in the current system, but the actual impact on the state budget is dependent on who funds these services. Because the bill states that all of these services would be subject to appropriation of federal, state and local funds, it is not certain whether these services would be funded by the communities or by the Department of Social and Rehabilitation Services.

Assuming that the Department of Social and Rehabilitation Services would be required to provide these service expansions, the agency estimates a fiscal impact totaling \$2,492,882, of which \$1,707,882 would be from the State General Fund. The estimate would also require 7.0 FTE positions for administering the contracts and providing mediation services.

Section 5 of the bill designates the community mental retardation centers as the single point of access into the system,

The Honorable Jo Ann Pottorff, Chairperson

March 17, 1995

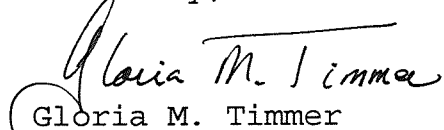
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requiring gatekeeping expenses totaling \$1.2 million. The estimate assumes 8,000 client referrals each year at a cost of \$150 per client. The estimate includes \$600,000 from the State General Fund for the 50.0 percent Medicaid administrative match. This section also creates community councils for the 27 community developmental disability organizations. If financed by the Department at \$20,000 each, the cost would total \$540,000, of which \$470,000 would be from the State General Fund annually.

Section 6 of the bill includes requirements for contract negotiations and an assessment of the rates set by the Department every two years. Assuming that the Department would have to negotiate 27 individual contracts under the new provisions, the administrative workload would require 7.0 FTE positions and \$292,882 from the State General Fund. The Department states that if a single state contract would suffice for all 27 organizations, the additional staff would not be necessary. The Department also estimates a \$280,000 cost for evaluating the rates every two years. The amount includes \$210,000 from the State General Fund.

Finally, Section 7 of the bill requires a mediation process in the event the Secretary finds any provider not in compliance with the bill's provisions. The Department estimates 50 mediations annually at a cost of \$3,600 per case, for a total of \$180,000, of which \$135,000 would be from the State General Fund. The agency states that the administrative workload could be absorbed in the event the 7.0 FTE positions described above were provided. Otherwise, the mediation process would require 5.0 FTE positions and an additional \$209,200.

Sincerely,


Gloria M. Timmer
Director of the Budget

cc: J.G. Scott, SRS

2458sub