

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 8, 1995 in Room 423-S of the Capitol.

All members were present except: Rep. JoAnn Flower, Excused

Committee staff present: Gordon Self, Revisor of Statutes
Marian F. Holeman, Committee Secretary

Conferees appearing before the committee: None

Others attending: See attached list

Since the last Committee meeting Representative Geringer met with interested parties to further explore the Hutchinson Heights issue. Commissioner Vega reported on SRS's recent efforts to assist Hutchinson Heights. The Federal Health Care Financing Administration (HCFA) controls federal funds for this type facility, and would not support the proposed Hutchinson Heights legislation. He offered some possible future steps SRS might pursue. Working through the Kansas Department of Health & Environment they could write a new plan, including Hutchinson Heights, requesting a Federal Home and Community Based Services (HCBS) waiver for persons with physical disabilities. An amendment to **Sub. HB-2458** would serve no purpose as this bill does not affect Hutchinson Heights and/or any other existing ICF/MR, nor can the bill affect federal funding. Representative Geringer submitted the Sub-Committee recommendations (Attachment 1).

Jarene Fluker, spokesperson for Hutchinson Heights, supports its remaining a 15-bed family "residence." She understood the position on the proposed amendment to **Sub.HB-2458** and concurred with a suggested resolution. Representative McKechnie moved to introduce a Resolution directing SRS to work with the Kansas Department of Health & Environment to minimize the impact of Intermediate Care Facility/Mental Retardation (ICF/MR) rules as they apply to fifteen bed facilities; and further directing SRS to apply to the Federal Department of Health and Human Services for a Home and Community Based Services (HCBS) waiver for people with physical disabilities, and to pursue any other possibilities which might be developed through the Federal Health Care Financing Administration (HCFA) and/or any other means to resolve the concerns raised by the supporters of Hutchinson Heights. Representative Mayans seconded the motion. The motion carried.

Letter from Executive Director of KARF presented to Committee for consideration (Attachment 2).

Representative Mayans reviewed the words "arbitration" and "mediation" as used in legislation, and suggested these words be changed in this bill. He discussed this with Representative O'Neal who indicated that from a judicial standpoint "mediation" is the preferred usage. Representative McKechnie moved to adopt **Sub.HB-2458** as recommended by the Sub-Committee. Representative Mayans seconded the motion. Motion carried.

Representative McKechnie moved to change Sec.6.(c)(2) word "arbitration" to "mediation". Representative Mayans seconded the motion. Motion carried.

Representative McKechnie moved to add language to indicate mediation is to be the first step in Sect 7, line 7, after "if.". Representative Mayans seconded the motion. Motion carried.

Representative McKechnie moved to change enacting date to January 1, 1996. Representative Mayans seconded the motion. Motion carried.

Representative McKechnie moved to bring this Sec. 5.(a) into line with the rest of the bill, on the 2nd line following law add, "and subject to appropriations.". Representative Standifer seconded the motion. Motion carried.

CONTINUATION SHEET

MINUTES OF THE HOUSE SELECT COMMITTEE ON DEVELOPMENTAL DISABILITIES, Room 423-S of the Capitol, at 3:30 p.m. on March 8, 1995.

Representative Mayans moved to delete from Sec. 4. (a), the words "and local government". Representative Wagle seconded the motion. Motion carried.

Representative Geringer moved to recommend **Sub.HB-2458**, as amended, favorably for passage. Representative McKechnie seconded the motion. Motion carried.

Representative Geringer moved to approved the Minutes from January 25, February 8, and 13, 1995. Representative Mayans seconded the motion. Motion carried.

Chairman Pottorff thanked everyone for their hard work throughout this process.

The meeting adjourned at 5:00 p.m.

GERALD G. GERINGER
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COMMITTEE ASSIGNMENTS
BUSINESS, COMMERCE & LABOR
HEALTH AND HUMAN SERVICES



TOPEKA

HOUSE OF
REPRESENTATIVES

March 8, 1995

Madam Chair:

The Sub-Committee charged to study Substitute House Bill 2458 believes that it is inappropriate and unwise to attach waivers and extensions to a new statewide health policy.

Additionally, Kansas SRS, on March 7, 1995, contacted (HCFA) Health Care Finance Administration regarding conversion in place of a 15-bed ICF-MR facility to an HCBS waived facility and SRS received no encouragement.

Therefore, it is recommended that:

1. Substitute
/HB 2458 be forwarded favorably from the Select Committee on Developmental Disabilities without any amendments.
2. At this time, Hutchinson Heights remain a 15-bed ICF-MR, if they (HH) so choose.
3. SRS pursue a waiver from HCFA so that Hutchinson Heights can convert to a center for the physically disabled only, if they (HHJ) so desire.

Respectfully,

A handwritten signature in cursive script that reads "Gerry".

Gerald G. Geringer
State Representative

*House Select Committee on
Developmental Disabilities
March 8
Attachment 1*

PROPOSED SUBSTITUTE FOR HOUSE BILL NO. 2458

By Select Committee on Developmental Disabilities

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

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

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

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.

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 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 services.

Sec. 4. (a) Except as otherwise specifically provided in this act and subject to appropriations of federal, state and local government 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 will provide for an organized network of community services for persons with developmental disabilities, maximize the availability of federal resources to

supplement state and local funding for such systems and 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 ensure the attainment of maximum quality and efficient delivery of community services.

Sec. 5. (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 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, 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) 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.

Sec. 6. To carry out the provisions of this act, the secretary shall establish in consultation with representatives of community developmental disability organizations and affiliates thereof, 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 funding to follow in an amount not less than that which is required to reimburse community service providers for services

as set forth in such person's plan for transfer from the institution to community services including expenses of relocation and initiation of services;

(2) consolidates federal and state funding sources;

(3) requires an independent, professional review of the rate structures on a biennial basis resulting in a recommendation to the legislature regarding rate adjustments. 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

(c) a system of contracting that:

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

(2) authorizes arbitration by an independent entity chosen by the parties to the contract in the event of contract disputes and if arbitration is not completed prior to the end of any existing contract, authorizes an extension of time of such existing contract or entering into a temporary contract;

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

(4) includes compensation for community services which meet the individualized needs of persons with developmental disabilities for community services; and

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

Sec. 7. Whenever the secretary finds a community service provider has failed to comply with the requirements, standards or rules and regulations established pursuant to this act or any other provision of law, the secretary shall have the power to inspect and review the operations of the community 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 of 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, by written findings of fact and conclusions of law, shall vacate, modify or make permanent the order.

Sec. 8. Nothing in this act shall authorize the secretary to require a community service provider to make expenditures not in compliance with contracts or agreements entered into by the governing board of such provider.

Sec. 9. Nothing in this act shall create any entitlement to services.

Sec. 10. The secretary may adopt rules and regulations to carry out the provisions of this act.

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



Kansas Association of Rehabilitation Facilities

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March 6, 1995

Rep. Gerald Geringer
Kansas House of Representatives
Room 431-N
State Capitol
Topeka, Kansas 66612

Dear Rep. Geringer:

We want to express our appreciation for your work, and for directing the energy of the subcommittee to help move House Bill 2458 forward in the process. This bill can make a major difference in the lives of thousands of Kansans with disabilities and their families in the coming decade. Before you make your final subcommittee report to the full committee, I want to raise a few items (most of which were raised in subcommittee) that we believe need further attention.

We would appreciate your support on these items, but at least we would ask that these concerns be discussed in full committee.

1. "Subject to appropriations" language --

As we previously stated, throughout this bill SRS has insisted on the above referenced language to shield them from litigation arising from any possibility that this bill might be construed as an entitlement. We ask for similar protection.

Since this bill **explicitly protects the state** via "subject to appropriations" language, and **does not similarly protect community providers**, the legislative intent appears to be to **not** protect community providers from entitlement-related lawsuits. We do not believe that to be your true intent, and believe the matter should be clarified.

We request that this issue be discussed again before the full committee, and that the committee consider adding the appropriate language in section 5 (a).

New section 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: ...

*House Select Committee on
Developmental Disabilities
3-8-95
Attachment 2*

page two

2. Local funds --

Throughout this bill, we have concurred with the broad authority granted to the secretary to implement, supervise and regulate this act.

However, in section 4 (a) the bill appears to extend SRS authority to include control over county contributions to CDDO's. We believe this is unintended.

County contributions are voluntary and subject to the conditions established by the individual counties. If this bill establishes state/local "dual controls" over county contributions, CDDO's will be caught between a rock and a hard place.

County dollars are frequently utilized as "gap-filling" money, to subsidize services for persons who are not eligible for state assistance or for whom state assistance is insufficient to cover necessary costs, or to finance activities not paid by the state... such as infrastructure.

Under the current language, the state may choose to exert authority over county dollars. If that occurs, counties will almost certainly react by reducing their local effort, which would increase the pressure on the state budget. The only remedy would be a mandated county mill levy for MR/DD services, which would be opposed by the counties and would pit our programs against the prevailing anti-mandate sentiment.

We urge the committee to amend section 4 (a) to delete the reference to "local government funds".

3. Regarding this same section, a number of organizations which contract with the state or federal government for special MR/DD programs have asked if this same language... in section 4(a)... would extend the Secretary's authority over all state and federal appropriations for all MR/DD dollars.

State funds governed by the Department of Education, under a broad interpretation of this language, could come under the SRS secretary's authority.

Other examples are federal grants for such activities as MR/DD assistive technology to various entities, and HUD housing... in these cases, the grants are made directly to the local contracting entities. Would the Secretary's authority extend to such funds? This may need to be raised with the revisor's staff.

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The following language could address both items, 2 and 3:

New section 4 (a):

"Except as otherwise specifically provided in this act, and subject to federal and state funds **appropriated to the secretary for the implementation of the provisions of this act**, the secretary..." same to the end of section 4 (a).

4. Finally, in the enforcement provisions of section 7, I would ask that our concerns be raised and that a compromise be considered.

As you recall, I expressed concerns that section 7 would undercut the negotiation and arbitration provisions of section 4 (c), (1) and (2). By allowing the state to enter directly into an enforcement mode for **any alleged** infraction or violation makes it easy for the state to ignore the relationship with local entities as contemplated in the contracting language of section 4.

I had asked that the state be **required** to employ negotiation arbitration as a first step in most instances.

Inasmuch as the subcommittee did not agree to that suggestion, I would offer a compromise:

The following language would assure that the integrity of the contract process not be subverted by administrative policies, standards or requirements which are changed in the middle of a contract term, unless such changes are made a part of the contract, or unless such changes are as a result of new law, rules or regulations.

I suggest this new language:

Section 7. Whenever the Secretary finds a community services provider has failed to comply with this act or any other provision of law, or with the rules and regulations established pursuant to this act, **or with requirements, standards or policies made a part of a contract established pursuant to this act**, the secretary shall have the power to...

This would meet some of the concerns of community service providers in this section.

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On behalf of the membership of the Kansas Association of Rehabilitation Facilities, I want to restate my personal gratitude and respect for the work of the Legislature generally, and your subcommittee specifically, as regards delivering community based services to persons with disabilities.

I know this reform process has been challenging, but please understand that, in our most stubborn moments, our intent is to be in a position to continue to meet the growing needs in the community.

HB 2458 will make it more possible for us continue to do a better job for our consumers. HB 2458 will also establish a rational statutory framework so that, in the coming years, the resources appropriated by the Legislature are utilized as efficiently and productively as possible.

Thanks for your help and consideration.

Sincerely,

Tom Laing
Executive Director

Copies: Reps. Pottorff, Gilmore, McKechnie