

MINUTES OF THE SENATE COMMITTEE ON WAYS AND MEANS.

The meeting was called to order by Chairperson Dave Kerr at 11:00 a.m. on March 28, 1996 in Room 123-S of the Capitol.

All members were present except:

Committee staff present: Alan Conroy, Legislative Research Department
Paul West, Legislative Research Department
Judy Bromich, Administrative Assistant
Ronda Miller, Committee Secretary

Conferees appearing before the committee:

Susan Duffy, Department of Revenue
Thelma Hunter Gordon, Secretary, Department on Aging
Rochelle Chronister, Secretary, Department of Social and Rehabilitation Services

Others attending: See attached list

HB 3045: Department of revenue, grants of funds from federal and other sources

Susan Duffy, Department of Revenue, appeared before the Committee and testified in support of **HB 3045** (**Attachment 1**). She noted that the bill was a recommendation from the Department of Administration which would provide statutory authorization for the Department of Revenue to accept federal funds. She explained that the Department's immediate problem is its inability to accept federal reimbursement for state sampling and testing of diesel fuel. **It was moved by Senator Salisbury and seconded by Senator Brady that HB 3045 be recommended favorably for passage and, because the committee believes that the bill is of a noncontroversial nature, that it be placed on the consent calendar. The motion carried on a roll call vote.**

HB 3047: Transfer of longterm care programs of social welfare from SRS to secretary of aging

Secretary Gordon appeared before the committee and presented her written testimony in support of **HB 3047** (**Attachment 2**). She told members that the bill transfers the administration of three programs for the elderly from the Department of SRS to the Department on Aging. Those programs are the Medicaid Nursing Facility Payment Program, the Medicaid Home and Community Based Nursing Facility Waiver Program and the Income Eligible Home Care Program. She reviewed amendments which were made by the House Committee and the House Committee of the Whole. In answer to a question, Secretary Gordon stated that the agency has no problems with any of the amendments.

In response to questions from Senator Karr, Secretary Gordon stated that the intent of the Department would be to provide services at the area agency level and that the area agencies would be the single point of entry. Senator Karr noted the single point of entry is not clearly spelled out in the bill. The Secretary stated that language in the bill states that area agencies on aging are local providers and, if an area agency on aging cannot provide services, the Secretary of Aging is authorized to contract with other local providers.

Responding to Senator Karr, the Secretary discussed estimates of the amount of longterm care reimbursement to nursing homes. She stated that SRS currently contracts with EDS but by the time the Department on Aging becomes the administrator of the programs, Blue Cross/Blue Shield will be the reimbursement agent. Sec. Gordon stated that the Department can renegotiate the contract if they are dissatisfied with it. She told the Senator that SRS is the single Medicaid agency for the state at this time. Staff added that the reason SRS is named as the fiscal agent in the bill is that under federal law there can be only one Medicaid fiscal agent in the state. He noted that because SRS also has the medical budget for the hospitals, it is logical that they handle the paperwork while the Department on Aging provides services.

Senator Karr inquired how many persons would be involved in the transfer of the programs. The Secretary noted that A Random Employee Sampling Technique (REST) is being conducted to determine the number of employees who are currently administering the programs. She estimated the number of employees to be approximately 1500 but stated that because SRS is privatizing some of the programs the number of employees transferred will be fewer.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON WAYS AND MEANS, Room 123-S Statehouse, at 11:00 a.m. on March 28, 1996.

In answer to Senator Rock, staff explained that the abolishment of K.S.A. 75-5308b would abolish the statutory requirement for the named commissions to provide the Secretary the flexibility to organize the agency. He stated that similar provisions are made within the Department of Administration and added that it is not the intent of the agency to totally eliminate those commissions. He added that the only people affected by declassification are those area directors who would become unclassified after the incumbents leave and the deputy secretary. Senator Brady expressed concern about the potential loss of expertise with unclassified positions.

Secretary Gordon requested two amendments to the bill:

--She explained that currently rules and regulations have to be adopted annually for the sliding fee scale and the agency would like to publish them in the Kansas register. She stated that this would be a method for establishing the rates not an attempt to abolish the sliding fee scale. (See Attachment 3 for proposed amendment)

--She requested that the words "or other community based entity" be inserted on page 5, line 6 of the bill after the words "If an area agency on aging" to provide parallel language in the bill.

Secretary Rochelle Chronister appeared before the Committee in support of **HB 3047** and reviewed her written testimony (Attachment 4). In answer to Senator Rock, she stated that the change from classified to unclassified status is required in statute. In answer to Senator Rock's concern about the abolishment of commissions, Mike Hutfles, Department of SRS, added that Sec. 75 of the statutes is outdated according to how the commissions are organized currently and that no duties are eliminated that aren't restated in another section of the bill.

In answer to Senator Karr, Sec. Chronister stated that SRS is required to be responsible for the Medicaid monies and will pay the bills while the Department on Aging will be responsible for staying within the budget. She added that the new MIIS system which will go on-line in November will serve as the paying agency for both SRS and Aging.

Senator Karr inquired about the physically disabled over the age 65. Secretary Chronister stated that that population had communicated their desire to stay with SRS and, therefore, SRS is creating a separate population for them, probably in Rehabilitation Services. She also stated that Independent Living would stay within SRS.

Senator Karr suggested that Sec. 17 be amended so that the Department on Aging would not have to go through SRS in applying for any waivers. Secretary Chronister commented that the Secretary of SRS must apply for waivers as SRS is the single state medicaid agency. Staff pointed out that the House included this section because they believe Senior Care Act expenditures save Medicaid dollars and should be matchable.

Senator Karr suggested that New Sec. 2 be amended to provide that the single point of entry for longterm services would be the area agencies on aging. Representatives from the Department on Aging stated that it is their intent to use area agencies as the single point of entry, but their attorney had advised that if the Department gave preference or even named an area agency on aging above any other entity it would give them property rights and, in the event the contract was broken, the Department would be open to a lawsuit (Attachment 5). Senator Karr moved, Senator Brady seconded, that New Sec. 2, page 1, line 31 be amended by including the words "and shall utilize area agencies on aging as single point of entry" following the word "act." The motion failed on a voice vote.

Senator Burke moved, Senator Salisbury seconded, that HB 3047 be amended by adoption of Secretary Gordon's suggestion regarding publication of the sliding fee scale (Attachment 3). The motion carried on a voice vote.

It was moved by Senator Salisbury and seconded by Senator Morris that HB 3047 be amended on page 5, line 6 following the word "aging" in the second sentence by adding the words "or other community based entity." The motion carried on a voice vote.

Senator Brady moved, Senator Burke seconded, that membership of the oversight committee be changed from five to three House Appropriations members and three Ways and Means members or their designees (for a total of twelve members), all else remaining the same. Senator Brady offered the motion as a cost savings measure. The motion carried on a voice vote.

It was moved by Senator Burke and seconded by Senator Salisbury that HB 3047 as amended be recommended favorably for passage. The motion carried on a roll call vote.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON WAYS AND MEANS, Room 123-S Statehouse, at 11:00 a.m. on March 28, 1996.

It was moved by Senator Vancrum and seconded by Senator Moran that the minutes of March 19, 20, 21, 22 and 26 be approved. The motion carried on a voice vote.

The Chairman adjourned the meeting at 1:05 P.M. The next meeting is scheduled for March 29, 1996.

Administrative Services Bureau
Susan K. Duffy, Executive Manager
Kansas Department of Revenue
915 SW Harrison St.
Topeka, KS 66612-1588



(913) 296-2331
FAX (913) 296-8932

Administrative Services

TO: Senator Kerr, Chairman
Senate Ways and Means

FROM: Susan Duffy
Department of Revenue

RE: HB 3045

DATE: March 28, 1996

Intermodal Surface Transportation Efficiency Act (ISTEA)

The ISTEA Act mandated that all states join the International Fuel Tax Agreement (IFTA) and have in place Interstate Registration Plan (IRP) agreements by September, 1996 or lose the right to collect fuel use taxes and apportion interstate motor carriers. The potential loss to Kansas would be \$28,257,977 in interstate apportionment registration (FY 95 amounts) and \$5,121,969 in fuel use taxes.

The ISTEA Act authorized annual grants to states to implement or enhance these programs in accordance with standards established by the National Motor Carrier Working Group. During FY 1997 we will receive \$244,000 under the NETASK and IFTA/IRP grants.

Motor Fuel Tax Evasion Program

This program is a joint enforcement effort with the IRS through the Federal Highway Administration to enforce the federal and state dyed fuel laws and regulations. Under this contract the IRS agrees to pay the state for sampling and testing diesel fuel for evidence of dye and concentration of dye. By participating with the IRS in this project, Kansas is able to submit all samples of fuel pulled for the purpose of testing evidence of dye to the federal lab at Cape Canaveral at no cost. The current contract entered into authorizes payment to the state of \$13 per sample to a maximum payment of \$140,000 per contract period. The state portion of this program was a major initiative undertaken last year by Governor Graves.

Problem Driver Pointer System (PDPS)

The state was mandated by federal law to implement this program by April 30, 1995. No loss of federal funds was tied to implementation. The program is intended to help states identify drivers who have outstanding violations in other states. The system "points out" those applicants from other states who have a problem on their record i.e., they have a suspension, DUI, revoked, etc. The applicant does not receive a Kansas license, but is told they must have a clean record from that state before we can issue them a Kansas license. The Department received \$127,715 to implement this project and we used \$96,733.

Commercial Driver License (CDL)

The states were mandated to comply with the CDL program by April 30, 1992 or for Kansas risk losing \$13 million in federal highway funds. The CDL program provides written and drive tests for individuals wanting a commercial license. Each individual can have only one license and if it is revoked, it is revoked for all 50 states. The state received \$818,794 over forty two months to implement the program.

*Senate Ways & Means
March 28, 1996
Attachment 1*

**KANSAS DEPARTMENT ON AGING
THELMA HUNTER GORDON, SECRETARY
SENATE WAYS AND MEANS COMMITTEE**

TESTIMONY ON HB 3047

March 28, 1996

HISTORY

Thank you for giving the Kansas Department on Aging (KDOA) the opportunity to testify on HB 3047. There has been discussion for several years among advocates for the elderly, as well as in the Legislature, about the possible consolidation of Long-Term Care Services for the Elderly in KDOA. Elimination of duplication, customer ease in accessing services, and the continuity of working with customers through one agency as their physical and financial condition changes are all reasons that have been cited for the transfer.

After evaluating the current organization of programs and departments, Governor Graves directed the Secretaries of the Department of Social and Rehabilitation Services (SRS) and KDOA to work together to prepare a plan which would consolidate programs for elderly Kansans in KDOA in an efficient manner. Representatives of both departments, along with individuals from Area Agencies on Aging (AAA's), the Kansas Department of Health and Environment (KDHE), and a wide-variety of other interested groups worked together as a transition team for the past eight months to develop a plan to achieve this consolidation.

The Secretaries then used the work product of the committee and input from public hearings held across the state to resolve a variety of issues raised in the transfer of these important services.

The result of these efforts was a transition plan which was submitted to the Governor and which is the basis for HB 3047. Copies of the transition plan are attached to my testimony.

TRANSFER GOALS

The transition team developed the transfer plan in an effort to achieve the following goals:

- Creation of a single point-of-entry for long term care services for elderly Kansans.
- Improved customer access to services.
- Eliminating duplication of long term care services between state agencies.
- Increasing customer choice about services they need and how they are provided.
- Privatization of service providers where possible.
- "Invisible" (or minimal disruption) of services during and after the transfer from the customer's perspective.
- No (or minimal) state employee displacement.
- Maintain cost-neutrality throughout the transfer using only existing funds to achieve the transfer of services.

PROVISIONS OF HB 3047

HB 3047 proposes the following steps to achieve these goals:

- Transfers the Medicaid Nursing Facility Payment Program (NF), and that part of both the

Medicaid Home and Community Based Nursing Facility Waiver Program (HCBS/NF) and the Income Eligible Home Care Program (IE) which serves Kansans age 65 or older from SRS to KDOA administration on or before July 1, 1997;

- Grants the Secretary of Aging the necessary powers to administer the transferred programs while remaining cognizant that SRS is the single state agency for Medicaid and has to retain certain authority for the programs;
- Makes the Governor the final authority in resolving any conflicts between the Secretaries of SRS and KDOA;
- Gives the Secretary of Aging the authority to contract with public or private entities for service delivery;
- Provides that employees transferred to KDOA from SRS will retain their benefits and leave rights, but allows the Secretary of Aging to hire any new attorneys on an unclassified basis. These attorneys would only be unclassified as permitted by federal law;
- Allows the Secretary of KDOA to appoint staff needed to effectively administer the transferred programs;
- Requires both Secretaries to inform the legislature of any additional statutory changes that will be needed for the transfer by December 31, 1996.

KDOA PROGRAM ADMINISTRATION

HB 3047 provides the framework for transferring the three programs from SRS to KDOA mentioned earlier in this testimony. The Transition Team is still active and several of the sub-committees are working on the service delivery plan for these programs after the transfer.

A Random Employee Sampling Technique (REST) study is being conducted at SRS for the period January 1, 1996 through June 30, 1996 to determine exactly the number of employees (FTE's) who are currently administering these programs as well as the dollars associated with those employees. The funds for the programs will be requested in the KDOA, rather than the SRS FY98 budget.

The Service Systems Team has split into three sub-committees to develop a plan for service delivery. All of these sub-committees: Future Options, Administrative Options, and Privatization are currently meeting to develop the delivery plan. I would be happy to provide the committee with any information about this committee work and anticipate that the work product will be provided before the 1997 Legislature convenes.

At KDOA we recognize that undertaking the administration of three large programs from SRS is an ambitious and formidable task. We are appreciative of the interest and tireless hours of involvement contributed by legislators, the AAA's, and the private sector in developing this plan.

Again, thank you for your cooperation in introducing this bill and for your interest today. I will be happy to try to answer any questions you may have about the transfer.

SRS/KDOA LTC TRANSITION PLAN FINAL RECOMMENDATIONS

Opening Statement

Regarding the proposed "cost-neutral" transfer of programs providing services to the frail or vulnerable older adult citizens of Kansas from the auspices of Social and Rehabilitation Services to the Kansas Department on Aging, it is the goal of both agencies to minimize the impact of this transfer on current consumers (to make this transition "invisible" to clients and consumers of services provided for adults).

Sometime in the future, however, we envision the following changes:

- *Creation of a single point-of-entry for services for adults, with support and guidance, rather than multiple assessments for multiple service needs.
- *Improved access for consumers.
- *Consolidation of funding sources to facilitate service delivery.
- *The use of private and local services whenever possible rather than state agency as provider.
- *Placing information and referral all in one program.
- *Minimizing confusion about diversity of services and programs available.
- *Eliminating duplication.
- *Increasing consumer choice regarding how services are provided and what services are needed. Enhancing consumer autonomy.
- *Basic restructuring of the service delivery model.
- *Increasing an advocacy role and strengthening the Ombudsman role.
- *On all levels, to re-create the system to better fit with and meet consumer needs.

This document presents a plan which reflects the work of a committee of staff representing our two agencies. The plan incorporates public input from both written comments and testimony presented in public hearings across the state. The Secretaries used the work of the committee and input from the public at large as a basis for further negotiations to resolve a variety of issues raised in the transfer of these important services from one department to the other.

General Agreements

The respective representatives have agreed:

1. That it is the stated goal of both SRS and KDOA that this transfer of programs and period of transition will be conducted in such a manner as to cause the least possible disruption to consumers (i.e. an "invisible" transfer from the consumer's perspective).

2. That a commitment will be made in this transfer process to maintain the expertise and experience of current service providers (i.e., SRS staff and Medicaid providers currently delivering services and managing programs,) by transferring that experience to the private sector to the extent possible.
3. That both agencies and the Area Agencies on Aging recognize and respect the high quality services provided by dedicated employees in these agencies. This valuable experience will be retained and utilized post-transition in the private sector to the greatest extent possible. The Secretary on Aging will have the authority to contract with AAA's or other agencies for delivery of services. Both SRS and KDOA will ensure that staff responsible for delivering services and administering programs will be adequately trained. KDOA will look first to available SRS staff affected by the transfer to meet service demand, and encourage their providers to do likewise.
4. That the Kansas Department of Social and Rehabilitation Services (SRS) and the Kansas Department on Aging (KDOA) will negotiate an interagency agreement as needed to insure continued Federal Financial Participation (FFP) related to the transition of Medicaid programs. SRS, as the single state agency, retains the ultimate authority and responsibility for the federal Medicaid funding expended on these programs, until such time as federal laws allow for other options. However, it shall be clear that KDOA is responsible for program and policy administration, and the fiscal responsibility of managing these programs. If changes in Federal law or allocation procedures were to be enacted, contracts between the two agencies would be renegotiated appropriately in light of the changes, maintaining the spirit of the transfer.
5. That the manner of service delivery will begin with privatization of service provision immediately. In this spirit, SRS has encouraged their direct service staff (LTC workers) to obtain certified nurse aide and home health aide certification in fiscal year 1996 to help ensure employability in the private sector.
6. That the transfer to KDOA from SRS of the Income Eligible Home Care Program (IE) for adults aged 60 and over, the Medicaid Home and Community Based Nursing Facility Waiver Program (HCBS/NF) for adults aged 65 and over, and the Medicaid Nursing Facility Program (NF) will be effective July 1, 1997. All programs will be transferred at the same time.
7. That resources (monetary and staff; staff determined as "full time equivalents or FTE's as determined by the REST study) will be fully available to transfer to KDOA at that time.
8. That SRS will continue to provide Medicaid operations (contracts, interagency agreements, state plan, etc.) support to KDOA until such time that resources are identified and transferred to KDOA or obtained by another means. SRS will continue to be responsible for and provide administrative hearing processes/services related to Medicaid appeals by both providers and consumers. If changes on the Federal level were to eliminate the requirement of a single state Medicaid agency, it might be possible to transfer some of this responsibility to KDOA. It is also agreed that Medicaid Management Information System (MMIS system) for Medicaid reimbursement that will be in place at the time of transfer within SRS will be utilized for all Medicaid claims payment. A KDOA liaison will be appointed to coordinate MMIS reporting needs and medical policy decisions

- related to providers, and insure regulatory compliance. SRS will continue the existing contract.
9. That KDOA will create, prior to transfer, an ongoing communication mechanism between KDOA and the SRS Income Maintenance Policy Division at central office and local levels.
 10. That prior to transfer, and no later than January 1, 1997, a plan for alignment and allocation of resources to be transferred from SRS to KDOA will be determined jointly by KDOA and SRS. Consideration will be given to existing caseloads; physical plant capacity; data processing and training capabilities; current location and housing of both KDOA/AAA and SRS programs, offices and staff. The Secretary of SRS shall announce all positions affected by the transition plan no later than February 1, 1997.

Program Specific Agreements

Income Eligible Home Care Program:

- *To the extent that this funding is not merged with the HCBS/PD or HCBS-NF waiver programs, SRS transfers full responsibility for administration of the remaining income eligible program, full remaining resources of program, remaining caseload and waiting lists to KDOA without imposing any specific rules or regulations in regard to income. Upon transition, IE program services will be provided only to those individuals who would not be eligible for HCBS services under the proposed changes to the eligibility standards for both the HCBS/NF and HCBS/PD programs.
- *KDOA will be responsible for developing and maintaining any necessary management reports and claims payment reports necessary for the administration of this program.

Home and Community Based Services/Nursing Facility Waiver Program (HCBS/NF):

- *Prior to transition, the HCBS/NF waiver will be amended to exclude, to the extent that development and implementation of an HCBS/PD waiver will meet service needs, any individual under age 65. (Although Older American's Act and the Senior Care Act programs serve people 60 and older, current Medicaid regulations would require the HCBS/NF and HCBS/PD waivers to split at age 65.) Note: Should the HCBS/PD waiver be denied as a result of current Medicaid rules or Medicaid reform (Medigrants), administration of programs and services for individuals under the age of 65 will remain in SRS.
- *That HCBS/NF service delivery will maintain the option of consumer directed attendant services through the Independent Living Centers.
- *That after July 1, 1997, KDOA is responsible for development of all HCBS/NF waiver renewals, reviews, amendments, cost-effectiveness reports and/or applicable state plan changes, rules and regulations as applicable for people aged 65 and over. SRS will be responsible for timely submission of above to HCFA.

- *With regard to client obligation: case managers will continue to collect HCBS obligations and deposit such payments to an identified state general fund account through established accounting procedures as designated by KDOA.
- *If the Medicaid State Plan is amended to include targeted case management for the frail elderly, administration of this Medicaid service will be the responsibility of KDOA. Other Medicaid Primary and Acute Care services still remain within SRS administration and budget.

Nursing Facility Program (NF):

- *That full administration, including promulgation of rules and regulations, and responsibility for the NF program is transferred, excluding Intermediate Care Facilities/Mentally Retarded (ICF/MRs) and Nursing Facilities/Mental Health (NF/MHs) facilities.
- *That KDOA will designate a liaison to develop necessary responsibilities for survey and certifications to be performed by the Kansas Department of Health and Environment (KDHE) with inter-agency agreement through SRS.
- *That KDOA will assume responsibility for case-mix demonstration project and rate setting responsibilities, and any contracts and funding tied to these responsibilities.
- *That existing NF litigation not resolved by July 1, 1997, will become the responsibility of KDOA, and SRS will ensure appropriate legal resources will be transferred.

Recommendations for Special Teams to be formed to report findings to the Long Term Transition Team:

- *Resource Identification Team: To survey infrastructure support services to determine the total resources critical to successful transfer. Will include fiscal staff from both agencies. A preliminary report is due by February 15th, 1996. Coordinators: Karen Hawk and Alice Knatt.
- *Legal Team: To study rules and regulations, policies and statutes that will be affected by or impact upon the transfer, and determine appropriate regulatory and statutory changes needed. Meetings for the Legal Team will begin immediately. A preliminary report is due Nov. 15th, 1995. Coordinators: Elaine Wells, John Badger, Jack Rickerson and Lyndon Drew.
- *Financial Eligibility Team: To explore various models of financial eligibility processing and service authorization. The full spectrum of options will be considered by this team on an on-going basis, including post-transition. This team will begin meetings before July 1. Coordinators: Dennis Priest, Maryann Benoit and Bill Cutler.
- *Data Processing Team: KDOA and SRS to jointly develop a final report before 4/1/96 on data processing capability capacity by county. Report will include details for CARS, SHARP,

MMIS, and other relevant systems. Coordinators: Alice Knatt, Sandra Hazlett, Tim Blevins and Tim Swietek.

*Allocation Team: To develop plan for alignment and allocation of resources to be transferred from SRS to KDOA, determined jointly by KDOA and SRS. Consideration given to existing caseload, physical plant capacity, data processing capabilities, current location and housing of SRS programs, offices and staff. A final report is due no later than January 1, 1997. Coordinators: O. D. Sperry, Dona Booe, Jack Rickerson, Alice Knatt and Denise Clemonds.

Service Systems Team: KDOA shall create a team which includes at a minimum representatives of AAA staff, Independent Living Centers and Home Health Agencies, that will establish and define the service delivery systems for July 1, 1997 and beyond. The proposed plan must be available for public comment by July 1, 1996. The team will begin to meet no later than February 1, 1996. Current SRS staff with knowledge and experience of the existing system will be utilized as a resource for this process. A subcommittee of this team (Denise Clemonds, Jayne Aylward and Elaine Wells) will identify an implementation plan for privatization. Coordinator: Lyndon Drew

*Interagency Agreement Team: SRS shall create a team to draft the necessary interagency agreement with KDOA to allow for the transfer of program administration. The interagency agreement will outline the administrative and fiscal responsibilities of both agencies in regard to the transition. The team will start meeting by no later than no later than March 1, 1996. Coordinators: Ann Koci, Sandra Hazlett, John Badger, Joe Kroll, and Jayne Aylward.

In presenting this report, the Secretaries of SRS and KDOA give special recognition to the Transfer Working Group Team who identified many of the policy issues raised in the transfer, and to members of the public who took the time to prepare comments or attend the public hearings.

Transfer Working Group Team:

SRS: Dona Booe
O.D. Sperry
Verlene Kunz
Julie Lemons
Bill McDaniels
Kip Lee
Dennis Priest
Bill Pickering
Elaine Wells

KDOA & AAA: Bill Cutler
Jayne Aylward
Lyndon Drew
Denise Clemonds
Irene Hart
Jane Taul
Mike Brooks
Alice Knatt

KDHE: Joe Kroll

January 10, 1996

75-5931. Same; rules and regulations.

The secretary shall adopt rules and regulations to govern:

- (a) The eligibility of persons receiving the services;
- (b) the level of payments to providers and funds spent for each client;
- ~~(e)~~ ~~sliding fee scales based on ability to pay for services provided under this act;~~
- ~~(d)~~(c) reports to be made to the secretary by the area agencies on aging;
- ~~(e)~~(d) the level of local match required to participate in the program during fiscal year 1990;
- ~~(f)~~(e) the selection of clients who are most in need of the program's benefits; and
- ~~(g)~~(f) such other matters as the secretary deems necessary for the administration of this act.

*Senate Ways & Means
March 28, 1996
Attachment 3*



KANSAS DEPARTMENT OF SOCIAL
AND REHABILITATION SERVICES

915 SW HARRISON STREET, TOPEKA, KANSAS 66612

ROCHELLE CHRONISTER, SECRETARY

March 28, 1996

Senator Dave Kerr
Chairman, Senate Ways and Means Committee

Chairman Kerr and Members of the Ways and Means Committee:

There have been many questions surrounding the SRS Reorganization legislation, HB2696, as it has moved through the process. I will attempt to address some of the concerns I have heard.

1) Why didn't the Governor and the Agency just submit an Executive Reorganization Order (ERO)?

Yes, we could have used an ERO. However, since an ERO cannot change statute and SRS is established by statute, a series of trailer bills would have followed. HB2696 seemed to be the best course of action.

2) Why are you changing some positions to unclassified positions?

SRS is an extremely large agency where a lot of people are in a position to make policy, with or without the Secretary. Currently, the Secretary, Deputy Secretary, Commissioners, Superintendents and a few others are the only unclassified positions currently in the agency. I felt that anyone who implements policy, makes policy or supervises over 200 people should serve at the discretion of the Secretary. None of these changes would affect anyone currently serving in their present position.

3) Doesn't this legislation give the Secretary too much power?

The SRS Reorganization portion of HB3047 has been changed from its original form, which was HB2696. HB2696 gave the Secretary the ability to create and/or abolish commissions, functions, etc. within the agency. I was looking for the flexibility to react to changes at the federal level. We're still not sure when or if the Fed's will ever pass 'Welfare Reform', but I felt this legislation gave SRS the best possible chance to react and change as the Feds change. This agency has long been accused of waiting too long to react to change (I should

*Senate Ways & Means
March 28, 1996
Attachment 4*

know, I complained about this for 16 years); HB2696 gave me the authority to change with the times faster.

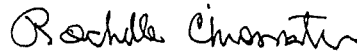
I understood the objections to giving the Secretary of SRS this much power, but there are other important aspects to this legislation, so I recommended to the House Appropriations committee that we strip 2c from HB2696. This is the provision that gives the Secretary the ability to create and abolish divisions of SRS with the Governor's approval.

After talking with House leadership, the Chairman of the House Appropriations Committee and the Chairman of the Subcommittee on Social Services, the decision was made to include the contents of HB2696 (the SRS Reorganization bill) into HB3047.

Enclosed is an Organization Chart so you can see what changes have already been made. Also, I have enclosed a list of all the repealers. The statutes that affect SRS have not been changed since the mid-1970's; the agency has. The repealers do away with the old commission names and allow the Secretary the ability to restructure commissions in the most effective and efficient way.

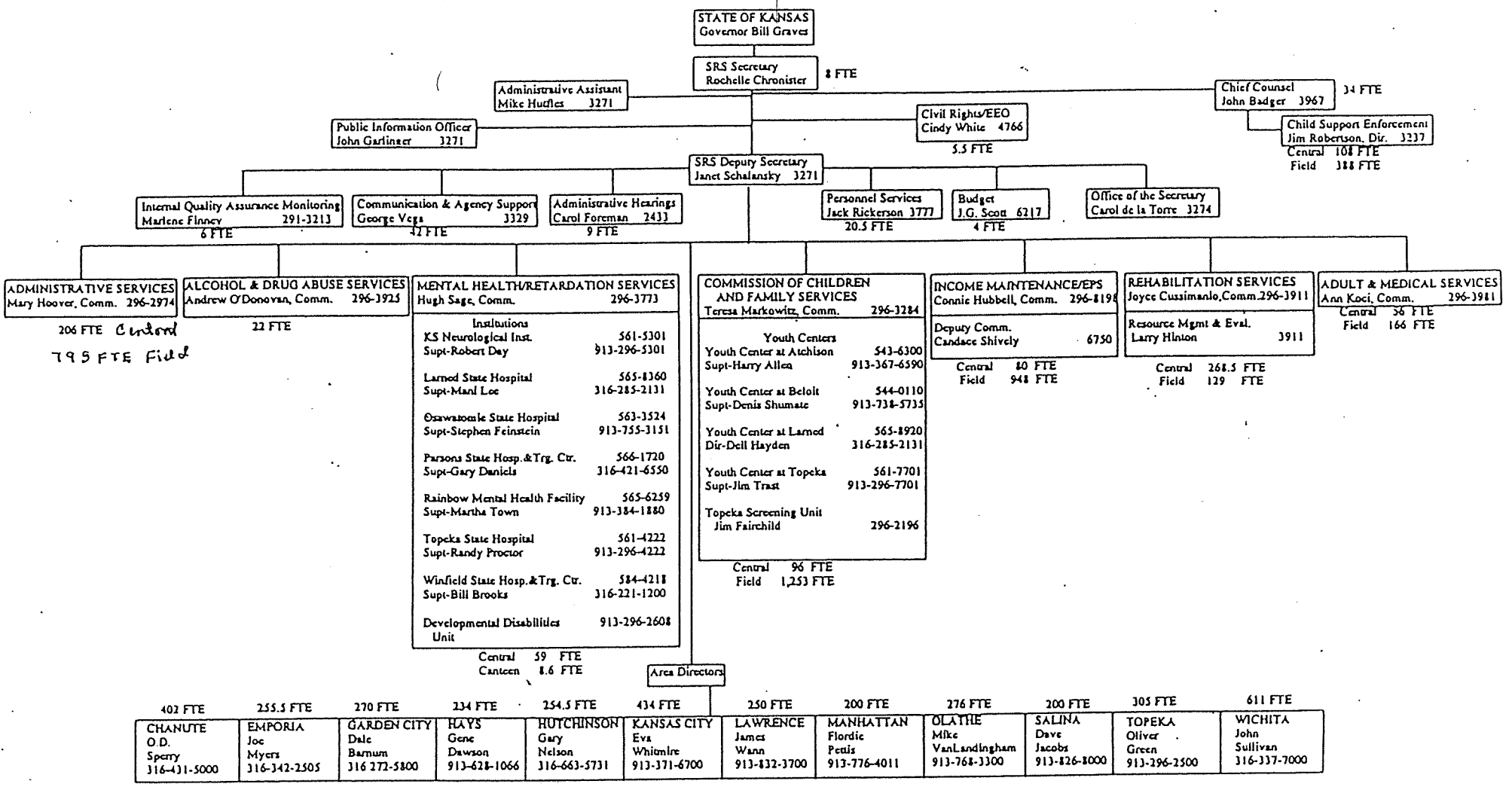
I hope you will be able to support the SRS Reorganization section of HB3047, as amended. I would also ask for your support of HB3047 in general. The transfer of long-term care to the Department of Aging will be much smoother with the passage of HB3047 this legislative session. If you have any questions or concerns please give Mike Hutfles or myself a call.

Sincerely,



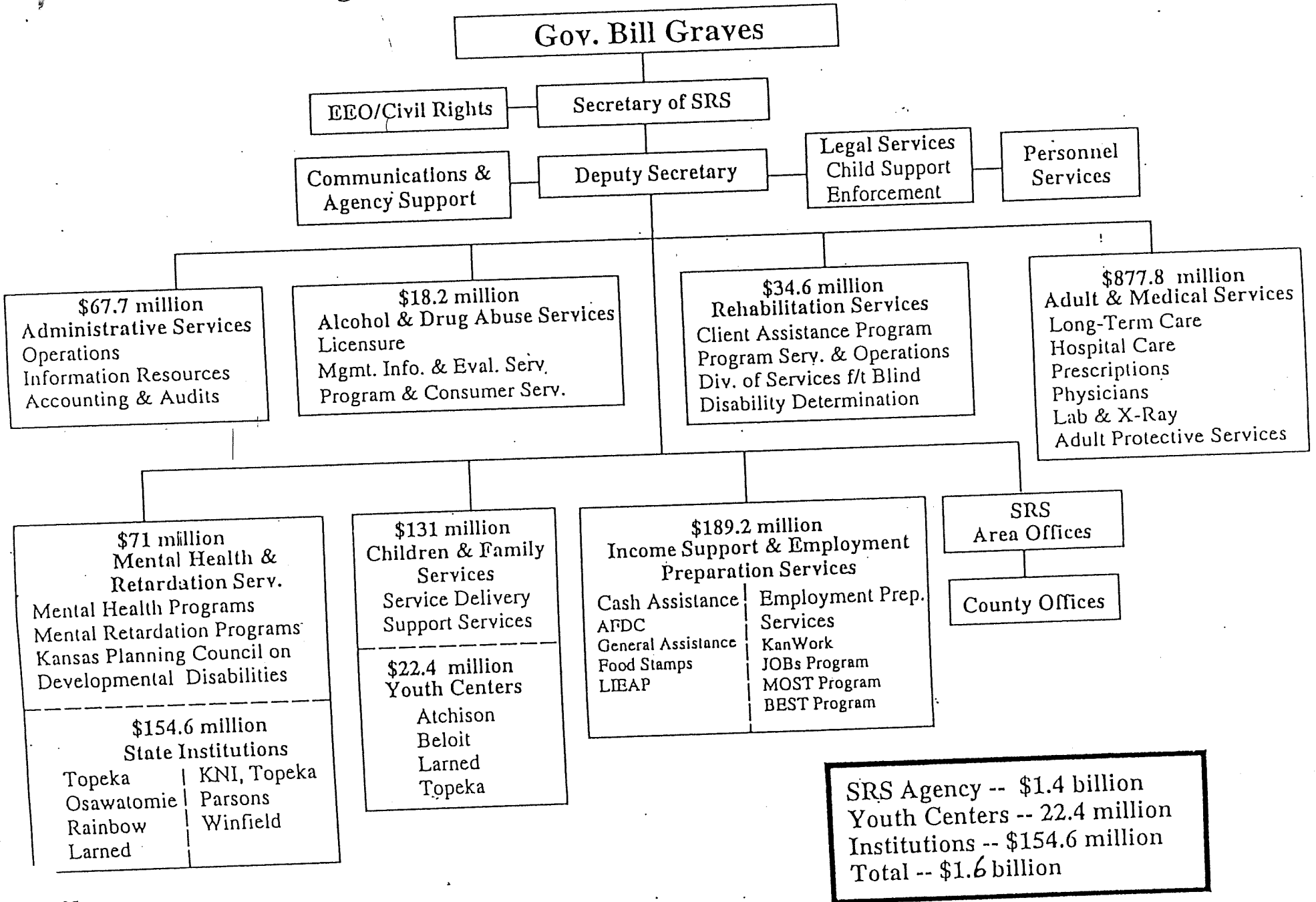
Rochelle Chronister
Secretary of SRS

SRS Central Office Organization Chart 11/95



SRS Organizational Chart and FY 1995 Actual Expenditures

4-4



SRS Agency -- \$1.4 billion
Youth Centers -- 22.4 million
Institutions -- \$154.6 million
Total -- \$1.6 billion

Page 3

HOUSE BILL No. 2696

By Committee on Governmental Organization and Elections

1-22

9 AN ACT concerning the department of social and rehabilitation services;
10 amending K.S.A. 75-5310 and repealing the existing section; also re-
11 pealing K.S.A. 75-5302, 75-5304a, 75-5304b, 75-5304c, 75-5306a, 75-
12 5306b, 75-5306c, 75-5306d, 75-5306e, 75-5306f, 75-5308a, 75-5308b,
13 75-5308c, 75-5316, 75-5318, 75-5323, 75-5324, 75-5327, 75-5329,
14 75-5330, 75-5332, 75-5333, 75-5334, 75-5335, 75-5336, 75-5337 and
15 75-5339.

16
17 *Be it enacted by the Legislature of the State of Kansas:*

18 New Section 1. As used in this act, "secretary" means secretary of
19 social and rehabilitation services.

20 New Sec. 2. (a) Subject to the limitations of this section, the secre-
21 tary of social and rehabilitation services may organize the department of
22 social and rehabilitation services in the manner the secretary determines
23 most efficient. Commission heads, division heads and employees of the
24 department of social and rehabilitation services not within a particular
25 commission or division shall perform such duties and exercise such pow-
26 ers as are prescribed by law and such other duties as the secretary may
27 prescribe. Such commission heads, division heads and employees shall
28 act for, and exercise the powers of, the secretary to the extent authority
29 to do so is delegated by the secretary.

30 (b) Subject to the provisions of subsections (a) and (c), personnel of
31 each commission and division of the department of social and rehabili-
32 tation services shall perform such duties and shall exercise such powers
33 as the head of the commission or division may prescribe and shall perform
34 such duties and shall exercise powers as are prescribed by law. Personnel
35 of each commission and division shall act for, and exercise the powers of,
36 their commission or division head to the extent the authority to do so is
37 delegated by the commission or division head.

38 (c) Whenever any power, duty or function is designated by statute to
39 be carried out by a particular organizational unit or employee within the
40 department of social and rehabilitation services, the secretary is author-
41 ized to transfer any such power, duty or function to any other organiza-
42 tional unit or employee within the department. Included within the se-
43 cretary's authority to reorganize the department is the authority to abolish

delete Section 2(c)
lines 38-43

LACS 1-3

1 organizational units and consolidate powers, duties and functions of such
 2 organizational units. Transfers and reorganization pursuant to this sub-
 3 section (c) shall be subject to the approval of the governor.

4 Sec. 3. K.S.A. 75-5310 is hereby amended to read as follows: 75-
 5 5310. The secretary of social and rehabilitation services may appoint a
 6 chief attorney and other attorneys for the department of social and re-
 7 habilitation services. The chief attorney shall serve at the pleasure of the
 8 secretary, shall be in the unclassified service under the Kansas civil service
 9 act and shall receive an annual salary fixed by the secretary of ~~social and~~
 10 ~~rehabilitation services~~ and approved by the governor. The secretary of
 11 ~~social and rehabilitation services~~ may also appoint staff assistants. Such
 12 staff assistants and attorneys other than the chief attorney shall be in the
 13 classified service under the Kansas civil service act. The secretary of ~~social~~
 14 ~~and rehabilitation services~~ may appoint one public information officer,
 15 one personal secretary and one special assistant who shall serve at the
 16 pleasure of the secretary, shall be in the unclassified service under the
 17 Kansas civil service act and shall receive annual salaries fixed by the sec-
 18 retary of ~~social and rehabilitation services~~ and approved by the governor.
 19 The secretary of ~~social and rehabilitation services~~ may appoint a com-
 20 missioner of administrative services deputy secretary who shall serve at
 21 the pleasure of the secretary, be in the unclassified service under the
 22 Kansas civil service act and shall receive an annual salary fixed by the
 23 secretary of ~~social and rehabilitation services~~ and approved by the gov-
 24 ernor.

25 The secretary may appoint commissioners and deputy commissioners
 26 as determined necessary by the secretary to effectively carry out the mis-
 27 sion of the department. All commissioners and deputy commissioners shall
 28 serve at the pleasure of the secretary, shall be in the unclassified service
 29 under the Kansas civil service act and shall receive an annual salary fixed
 30 by the secretary and approved by the governor. The secretary may also
 31 appoint a director for each of the department's management areas. Each
 32 area director shall serve at the pleasure of the secretary, be in the un-
 33 classified service under the Kansas civil service act and shall receive an
 34 annual salary fixed by the secretary and approved by the governor. Noth-
 35 ing in this act shall affect the classified status of any person employed as
 36 a deputy commissioner or area director on the day immediately preceding
 37 the effective date of the act and the unclassified status shall apply only to
 38 persons appointed to such positions on or after the effective date of the
 39 act.

40 Sec. 4. K.S.A. 75-5302, 75-5304a, 75-5304b, 75-5304c, 75-5306a, 75-
 41 5306b, 75-5306c, 75-5306d, 75-5306e, 75-5306f, 75-5308a, 75-5308b, 75-
 42 5308c, 75-5310, 75-5316, 75-5318, 75-5323, 75-5324, 75-5327, 75-5329,
 43 75-5330, 75-5332, 75-5333, 75-5334, 75-5335, 75-5336, 75-5337 and 75-

- 1 5339 are hereby repealed.
- 2 Sec. 5. This act shall take effect and be in force from and after its
- 3 publication in the statute book.

- 75-5302 Transfers of powers, duties, functions, etc., from the state board of social welfare to SRS. (1973)
- 75-5304a Abolishes the division of vocational rehabilitation and transferred powers, duties and functions to rehabilitation services under the supervision of the secretary of SRS. (1980)
- 75-5304b Establishes rehabilitation services and allows for the appointment of a commissioner by the secretary. Commissioner shall be unclassified position with salary set by the secretary and approved by the governor. (1980)
- 75-5304c Transfers powers, duties and functions of the division and director of vocational rehabilitation to rehabilitation services and the commissioner of rehab services. (1980)
- 75-5306a Abolishes the division of social services and the director of social services position. Transfers powers, duties and functions to the commissioner of social services established in 75-5306b. (1980)
- 75-5306b Establishes social services and allows the appointment of a commissioner of social services. Commissioner shall be unclassified position with salary set by the secretary with approval by the governor. Commissioner shall oversee the division of services to children and youth and oversee all programs for children, youth and adults. (1980)
- 75-5306c Transfers powers, duties and functions of the division and director of social services to the commissioner of social services. (1980)
- 75-5306d Transfers duties, powers and functions related to income maintenance and medical services from the division and director of social services to income maintenance and medical services. (1980)
- 75-5306e Establishes income maintenance and medical services and the appointment of a commissioner of income maintenance and medical services. The commissioner shall be an unclassified position with salary set by the secretary with approval from the governor. (1980)
- 75-5306f Transfers powers, duties and functions relating to income maintenance and medical services from the division and director of social services to the commissioner of income maintenance and medical services. (1980)

HB 2696
page two

- 75-5308a Abolishes the division of mental health and retardation services and the position of director of MHRS. (1980)
- 75-5308b Establishes mental health and retardation services and the appointment of a commissioner of MHRS. The commissioner shall be an unclassified position with salary set by the secretary with approval by the governor. (1980)
- 75-5308c Transfers powers, duties and functions of the division and director of MHRS to the commissioner of MHRS. (1980)
- 75-5316 Grants power to the secretary of SRS to organize the department in the manner deemed most efficient. Allows for the delegation of authority to division heads and staff assistants. (1973)
- 75-5318 Allows any word, phrase or sentence in the order that is determined to be invalid to be severed without affecting the remaining provisions of the order. (1973)
- 75-5323 States that the principal function of the commissioner of youth services shall be to promote, safeguard and protect the social well-being and general welfare of children and youth by instituting certain programs. (1974, 1982)
- 75-5324 Designates the powers of the commissioner of youth services. (1974, 1982)
- 75-5327 States that statutes that have general application to the department of SRS also apply to the division of children and youth. (1974)
- 75-5329 Establishes alcohol and drug abuse services and the appointment of a commissioner of ADAS. Commissioner shall be unclassified with salary set by the secretary and approved by the governor. (1980)
- 75-5330 States that any pending legal action shall not be affected by reorganization. (1980)
- 75-5332 Abolishes the division of vocational rehabilitation, division of social services, division of MHRS and the positions of directors of voc rehab, social services and MHRS. (1980)
- 75-5333 Establishes youth services and the appointment of a commissioner of youth services. The commissioner shall be unclassified with salary set by the secretary and approved by the governor. (1982)

- 75-5334 Transfers powers, duties and functions relating to youth services and programs from the commissioner of social services and the commissioner of MHRS to the commissioner of youth services. (1982)
- 75-5335 Establishes adult services and the appointment of a commissioner of adult services. The commissioner shall be unclassified with salary set by the secretary with approval by the governor. (1982)
- 75-5336 Transfers powers, duties and functions relating to adult services from the commissioner of social services to the commissioner of adult services. (1982)
- 75-5337 States that any pending legal action will not be affected by reorganization. (1982)
- 75-5339 States that any conflict regarding disposition of property, personnel, etc. that arises during reorganization shall be resolved by the governor. (1982)



BILL GRAVES
Governor

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SHEILA FRAHM
Lt. Governor/Secretary

December 14, 1995

Thelma Hunter Gordon
Secretary of Aging
150-S Docking State Office Building
915 SW Harrison
Topeka, KS 66612-1500

Re: SRS-Aging Transfer of Programs and Services: Questions Regarding the Proposed Legislation.

Dear Secretary Hunter Gordon:

In your letter of December 6, 199⁵, you address four concerns with the draft legislation intended to transfer several SRS programs and some SRS services to your Department for administration. I will address each concern in the order asked.

(1) *Is the Governor permitted by law to transfer SRS's Home & Community Based Nursing Facility Waiver Program and its Income Eligible Program by Executive Order to Aging when there is no specific statutory authority for those two SRS programs?*

While there is no Kansas statute which authorizes SRS to establish either the Home & Community Based Nursing Facility Waiver Program (HCBNF Waiver Program) or the Income Eligible Program (IE Program) by those names, Section 39-708c requires the Secretary of SRS to develop "state plans" pursuant to the Social Security Act whereby —

the state cooperates with the federal government in its program of assisting the states financially in furnishing assistance and services to eligible individuals. The secretary shall undertake to cooperate with the federal government on any other federal program providing federal financial assistance and services in the field of social welfare not inconsistent with this act. The secretary is not required to develop a state plan for participation or cooperation in all federal social security act programs or other federal programs that are available.

*Senate Ways & Means
March 28, 1996
Attachment 5*

Secretary Hunter Gordon
December 14, 1995
Page 2

K.S.A. 39-708c(a).

I interpret that very broad language to mean that the Secretary of SRS is authorized to pick and choose among the various federal social programs which are available for state participation. Pursuant to that authority, the Secretary (or, more accurately, one of the current Secretary's predecessors) decided that two of the myriad available federal programs in which Kansas (through the SRS) would participate would be the HCBNF and IE Programs. Therefore, I believe that there is statutory authority for the HCBNF and IE programs whether they are mentioned by name in the statute or not. With that as background, we turn to a governor's executive order.

Governors' Executive Reorganization Orders are authorized by Section 6 of Article 1 of the Kansas Constitution. The Governor is authorized to issue an Executive Reorganization Order "[f]or the purpose of transferring, abolishing, consolidating or coordinating the whole or any part of any state agency, *or the functions thereof*, within the executive branch of the state government, when the governor considers the same necessary for efficient administration" KAN. CONST. art 1, § 6(a) (emphasis added). The Department of Social & Rehabilitation and the Department on Aging are both within the executive branch of Kansas government. I believe that the administration of social welfare programs of the type to be transferred would be considered "functions" of both SRS and Aging. I conclude that a Governor's Executive Reorganization Order would be another way to transfer the programs to Aging.

An Executive Reorganization Order would have to be accompanied by "a governor's message which shall specify with respect to each abolition of a function included in the order *the statutory authority for the exercise of the function.*" KAN. CONST. art 1, § 6(b). I believe the "statutory authorit[ies]" for the exercise of the "function" of administering the social welfare programs which benefit aging Kansans are K.S.A. 39-708c(a) for SRS and K.S.A. 1994 Supp. 75-5903 and 75-5908(b), (c), and (d); and K.S.A. 75-5909 for Aging. Those statutes would be cited in the Governor's Message accompanying the Executive Reorganization Order.

If an Executive Reorganization Order was used to reorganized SRS and Aging by transferring the programs to Aging and the transfer was to be effective on July 1, 1997, the Executive Reorganization Order would have to be introduced into the Kansas House and Senate "within the first thirty calendar days" of the 1997 regular legislative session. *See* KAN. CONST. art 1, § 6(a), (c).

There is a drawback to using an Executive Reorganization Order. While I have not done exhaustive research on the issue, the law in Kansas is unclear on whether an executive reorganization order would be authority for an agency to which programs were transferred to adopt regulations pertaining to the administration of the transferred programs. Under the law as far as I have looked so far, a state agency is only empowered to perform those acts and functions

which are permitted by the legislation creating the agency. The power to adopt regulations is not an inherent power of a state agency, it must be granted to the agency by the legislature. It is true that the Department on Aging has been authorized by the legislature (in K.S.A. 75-5908(m)) to "adopt such rules and regulations as may be necessary to administer the provisions of this act," but the programs transferred by an executive reorganization order would be coming to Aging from outside the act creating the Department.

(2) *Should the Department on Aging adopt the SRS hearing procedures, as proposed in Section 2(j) of the draft legislation?*

Section 2(j)(1) through (6) provides for a hearing procedure based on the Kansas Administrative Procedure Act, K.S.A. 77-501 *et seq.* Because of due process considerations, the Department is going to need some sort of procedure to provide a hearing for persons denied services or whose services are terminated under any program administered by the Department and for any providers whose contractual right to provide program services for the Department is adversely affected by some Department action. The Kansas Administrative Procedure Act "applies only to the extent that other statutes expressly provide that the provisions of this act govern proceedings under those statutes." K.S.A. 77-503(a). The Department will need some sort of administrative hearing procedure. If it adopts the procedure in KAPA by reference, it is spared having to write and adopt its own administrative hearing procedure by regulation.

(3) *Should the language in Section 2(k) anticipating the repeal of the Boren Amendment be included in the legislation?*

In his Memorandum to John Badger and Janet Schalansky, Mr. Bruce Roby makes the following comment about Section 2(k): "This removes the Boren Amendment language from provider payment requirements in case the Medicaid Act is actually repealed or substantially amended. It might be desirable to also amend K.S.A. 39-708c(x) accordingly." The "Boren Amendment" which was removed may have been the same as this Boren Amendment language that appears in the referenced K.S.A. 39-708c(x):

The secretary shall establish payment schedules for providers of hospital and adult care home services under the medicaid plan that are reasonable and adequate to meet the costs which must be incurred by efficiently and economically operated facilities in order to provide care and services in conformity with applicable state and federal laws, regulations, and quality and safety standards.

K.S.A. 39-708c(x)(2). That language includes the crucial terms and phrases from the Boren Amendment:

Secretary Hunter Gordon

December 14, 1995

Page 4

- (a) A State plan for medical assistance must --
 - (13) provide --
 - (A) rates . . . which the State finds . . . are reasonable and adequate to meet the costs which must be incurred by efficiently and economically operated facilities in order to provide care and services in conformity with applicable State and Federal laws, regulations, and quality and safety standards

42 U.S.C. 1396a(a)(13)(A).

If the proposed legislation is going to address the rates set and paid by the State to hospitals for inpatient hospital services and to nursing homes, then it would be a good idea to **leave out** that language from the Boren Amendment which appears in the current version of 39-708c(x)(2). The language does not add anything. Under the current Medicaid law, it is irrelevant what any Kansas statute would provide regarding a payment rate for any Medicaid program, because a State may not participate in the Medicaid program unless it has its State Medicaid plan approved by HCFA. In order to have a plan that HCFA will approve, the State's plan must include the provisions required by Federal statutes and regulations. One of those provisions which must be included in an approved State plan is the reimbursement rate required by HCFA. The Federal statute or regulation setting the Medicaid reimbursement rate is *always* going to control, so it is unnecessary to describe the rate in a State statute.

(4) *Do I believe that including language in the draft legislation requiring your Department to give first choice in providing services under one of the transferred programs to an established area agency on aging within a planning service area would increase the likelihood of an unfavorable result in a lawsuit by a disgruntled AAA?*

Yes, definitely. Such a "first choice" provision would lead the AAA to believe it had a lock on providing all services within a PSA. Property rights are created by state law or by contracts with the State and constitutional law protects those property rights. At a minimum, a "first choice" clause in a statute makes it possible for the AAA to craft a pretty convincing "due process" argument to the effect it had a property interest in providing all program services within a PSA of which the Department on Aging could not deprive it without due process of law. That means that the Department could not award a contract for any program services within the PSA to anyone other than the AAA, unless it first gave the AAA a full administrative hearing in which to present its case on why it should have been awarded the contract (procedural due process). It is true that a disgruntled AAA might sue anyway, but why build ammunition for arguments into the statute? In my opinion, there would be less exposure to suit by an AAA and an increased likelihood of success in the event of a suit, if the provision is left out. (It would also be wise to leave it out of the SRS-DoA Agreements.) Consider this also: unless something incredible happens in the future, program money is going to get increasingly scarce. If a service

Secretary Hunter Gordon
December 14, 1995
Page 5

provider arrives on the scene with a more efficient way to provide services or a way to provide more services for less or the same money, why should the Department be forced to consider making a less efficient AAA its first choice. That would appear to be unsound fiscal management.

Finally, another consideration is whether or not the contracts for provisions of services within the transferred programs should be subject to the competitive bidding process set out in K.S.A. 75-3739. That statute provides:

[a]ll contracts for . . . contractual services to be acquired for state agencies *shall* be based upon competitive bids, except that competitive bids need not be required: (1) For contractual services when, in the judgment of the director of purchases, no competition exists; or . . . (4) when any statute authorizes another procedure or provides an exemption from the provisions of this section.

K.S.A. 75-3739(a). If you wish for the letting of service contracts to be exempt from the competitive bidding process, the proposed legislation needs to include such a provision making the exemption very clear. (Please note that in the edited version of the proposed legislation which I am enclosing, I added the exemption language in Section 3, on page 6, lines 125-26.)

I have taken the liberty of going over the proposed legislation and making some proposed changes and additions. I have not attempted to make stylistic changes or to otherwise change the basic form or the substance of the legislation. I was not asked to do that. I have used:

- ~~strikethroughs~~ to indicate language I thought should be deleted;
- *italics* to indicate new or substitute or added language; and
- ~~redline~~ to indicate questions or thoughts I thought should be addressed.

Among other things, I tried to make it clearer that SRS is to remain the party to be sued regarding any of the programs up to the effective date(s) of the transfer(s).

With regards to lawsuits, has anyone checked to see what the track record is regarding lawsuits for the programs being transferred (*e.g.*, how many lawsuits for each program, in the past how many years, with what results, how many settlements prior to lawsuits being filed, etc.)? Has anyone asked how many lawsuits regarding these programs are currently pending? Is SRS aware of any threatened lawsuits involving any of these programs? It may seem entirely logical to place these programs under the administration of Agency because they serve older Kansans, but I know SRS is a lightning rod for lawsuits by the citizens it serves and I am concerned that SRS may be tiring of spending money defending lawsuits and may be wishing to "share the wealth" by transferring these programs.

Another thing to consider is that there is no direct statutory authority for transferring moneys appropriated by the legislature for one state agency to another state agency, even if the

Secretary Hunter Gordon

December 14, 1995

Page 6

programs for which the appropriations were made are transferred to the other agency. So, for the fiscal year in which the programs are transferred, money for the programs will have to be appropriated for the Department on Aging instead of SRS.

If you have any questions about any of this, please do not hesitate to call.

Sincerely,



Daniel J. Gronniger
Staff Attorney

Enclosure