

Approved: 2-20-97
Date

MINUTES OF THE SENATE COMMITTEE ON PUBLIC HEALTH AND WELFARE.

The meeting was called to order by Chair Sandy Praeger at 10:00 a.m. on February 14, 1997 in Room 526-S of the Capitol.

All members were present except:

Committee staff present: Emalene Correll, Legislative Research Department
Jo Ann Bunten, Committee Secretary

Conferees appearing before the committee:

Daniel J. Gronniger, Chief Counsel, Kansas Department on Aging
Bill Henry, Kansas Area Agencies on Aging

Others attending: See attached list

Hearing on: SB 129 - Secretary of Aging powers and duties; Older Americans Act, Senior Care Act and long-term care programs

Daniel J. Gronniger, Chief Counsel, Kansas Department on Aging, testified before the Committee in support of SB 129 which would amend several statutes relating to the Secretary's powers and duties in the Department on Aging. The bill would address several administrative and policy issues as noted in his written testimony. (Attachment 1) During Committee discussion concern was expressed with language in the bill that would eliminate the advisory board for the Senior Care Act and other policy issues. The Chair requested Mr. Gronniger look at only the administrative issues in SB 129 as well as SB 128, and combine those issues for the Committee's consideration. The Chair noted that those concerns relating to policy issues would be submitted for study during the interim by a request to LCC. Issues relating to adult care homes would also be considered for study during the interim.

Bill Henry, representing the Kansas Area Agencies on Aging, expressed support for the administrative issues addressed in SB 129.

Announcements

The Chair announced the agenda for the coming week.

Adjournment

The meeting was adjourned at 10:30 a.m.

The next meeting is scheduled for February 17, 1997.

SENATE PUBLIC HEALTH AND WELFARE COMMITTEE GUEST LIST

DATE: 2-14-97

NAME	REPRESENTING
KEITH R LANDIS	CHRISTIAN SERVICES COMMITTEE ON PUBLICATION FOR KANSAS
RICHARD SCHUTZ	SRS
TK Shivek	KANSAS LEGAL SERVICES
Rosemary E Hunt	OCT/CRO
Jocelyn Lyons	Sawhawk Area Agency on Aging
DH Zeh	KATSA
Bob Harder	MPS
Josh Koell	KOHK
John Federico	Pete McBill + Assoc
Danielle We	Governors Office
Michelle Peterson	Peterson Public Affairs
Bill Henry	Ks Area Agencies on Aging
Preston Bayton	DD Council
Charles Moore	SRS - Am S
Paul Johnson	PACK
Sandy Strand	Ks Advocates for Better Care
Jeanne Halford	Washburn
Martha Hodgesmith	Attorney General
Susan Baker	Hein + Weir

SENATE PUBLIC HEALTH AND WELFARE COMMITTEE
GUEST LIST

DATE: 2-14-97

NAME	REPRESENTING
Jean Kraba	K5 G-ship Prog.
Jan Dockum	Washburn University

Testimony on Senate Bill 129
Senate Public Health and Welfare Committee
February 5, 1997
by
Daniel J. Gronniger
Kansas Department on Aging

Senator Praeger and members of the Committee, thank you for this chance to speak in support of Senate Bill 129. This proposed legislation is a "clean-up bill."

Section 1 would amend the statute listing the Secretary's powers and duties (K.S.A. 75-5908). These amendments would specifically authorize the Secretary:

(1) to draft regulations for all of the Department's programs (ensuring that there will never be a program statutorily assigned to the Department for which the Secretary lacked the authority to adopt regulations) (in K.S.A. 75-5908(m));

(2) to lend the Department's surplus State property to area agencies on aging while retaining ownership of it (thereby squeezing maximum value and use out of State property before it is disposed of through the surplus property act) (in K.S.A. 75-5908(n));

(3) to enter into contracts and agreements not prohibited by other laws which the Secretary finds necessary (such as a contract for equipment or services let through the competitive bid process) (in K.S.A. 75-5908(o)); and

(4) to recoup some of the costs of printing and distributing the Department's pamphlets and brochures (in K.S.A. 75-5908(p)).

The amendment in Section 2 to subsection (d) of K.S.A. 1996 Supp. 75-5910 cleans up a problem with syntax.

The amendments in Sections 3(a) (K.S.A. 1996 Supp. 75-5928(a)) and 4(a) (K.S.A. 75-5932(a)) are intended to eliminate the need for a "regional or local coordinating committee" to help area agencies on aging develop a Senior Care Act plan. Area agencies on aging rely upon the "advisory councils" required by the Older Americans Act to advise them on their OAA area plans. Those same "advisory councils" are capable of and qualified to counsel the area agencies on their Senior Care Act plans. Using a single body to advise the area agency on both Older Americans Act and Senior Care Act plans should result in better plan coordination between the programs of the two Acts. The "regional or local coordinating committee" was a good idea when the Senior Care Act was first passed in 1989. Area agencies (and OAA advisory councils) now have the benefit of over seven years experience with the Senior Care Act programs.

The amendment in Section 5(d) (K.S.A. 1996 Supp. 75-5945(d)) is intended to ensure that State employees who will be transferred to the Department from the Department of Social & Rehabilitation Services will retain the same civil service status they enjoyed at SRS.

Finally, a duplicate sentence is stricken in the amendment to Section 5(k) (K.S.A. 1996 Supp. 75-5945(k)).

Testimony on Senate Bill No. 129
Senate Public Health and Welfare Committee
February 5, 1997
by Daniel J. Gronniger, Kansas Department on Aging
Page 2

Attached to this testimony is one proposed amendment to the first print (1-28) of Senate Bill No. 129. The Department would propose amending Section 3(d)(1) of Senate Bill No. 129 (K.S.A. 1996 Supp. 75-5928(d)(1)) by inserting the phrase "or contracts with" to make it clear that the Department may use either a grant or a contract when arranging for Senior Care Act in-home services with area agencies on aging. Performance outcomes and quality assurance measures are traditionally found in contracts rather than grants. [This amendment would appear on Page 2, Line 39 of the first print of S.B. 129.]

(H:dg0164.wpd)

PROPOSED AMENDMENT TO SENATE BILL NO. 129

by Kansas Department on Aging

February 5, 1997

AN ACT concerning the Secretary of Aging; older Americans act programs; senior care act; department on aging; amending K.S.A. 75-5908 and 75-5932 and K.S.A. 1996 Supp. 75-5910, 75-5928, 75-5945 and repealing existing sections; also repealing K.S.A. 75-5935.

Section 1. K.S.A. 75-5908 is hereby amended to read as follows: 75-5908. In addition to powers and duties otherwise provided by law, on and after July 1, 1977, the secretary shall have the following powers and duties:

(a) To evaluate all programs, services and facilities for the aged within the state and determine the extent to which present public or private programs, services and facilities meet the needs of the aged.

(b) To evaluate and coordinate all programs, services and facilities for the aging presently furnished by state and federal agencies, and make appropriate recommendations regarding such services, programs and facilities to the governor and legislature.

(c) To function as the sole state agency to develop a comprehensive plan to meet the needs of the state's senior citizens.

(d) To receive and disburse federal funds made available directly to the department, including those funds made available under the federal older Americans act of 1965, *42 U.S.C. 3001 et seq.*, (~~public law 89-73~~) and any amendments thereto, for providing services for senior citizens or for purposes related thereto and to develop and administer any state plan for the aging required by federal law.

(e) To solicit, accept, hold and administer in behalf of the state any grants, devises or bequests of money, securities or property to the state of Kansas for services to senior citizens or purposes related thereto.

(f) To provide consultation and assistance to communities and groups developing local and area services for senior citizens.

(g) To promote community education regarding the problems of senior citizens through institutes, publications, radio, television and the press.

(h) To cooperate with agencies of the federal government in studies and conferences designed to examine the needs of senior citizens and to prepare programs and facilities to meet those needs.

(i) To establish and maintain information and referral sources throughout the state in conjunction with other agencies.

(j) To provide such staff support as may reasonably be required by the council.

(k) To establish state policies for administration of the department; for the disbursement of federal older Americans act funds within the state; and for state administration of federal older Americans act programs consistent with relevant federal law, rules and regulations, policies and procedures.

(l) To keep informed of the latest developments of research, studies and programs being conducted nationally and internationally on problems and needs of aging.

(m) To adopt such rules and regulations as may be necessary to administer the provisions of this act *department and the programs and services it provides.*

PROPOSED AMENDMENT TO SENATE BILL NO. 129

by Kansas Department on Aging

February 5, 1997

Page 2

(n) To lend surplus state property under the authority of the department on aging to area agencies on aging or to the state long-term care ombudsman to help them perform duties required under state and federal programs administered by the department on aging.

(o) To enter into any contract or agreement, not otherwise prohibited by law, which the secretary finds necessary or expedient to perform the powers, duties, and functions of the secretary or the department.

(p) To charge and collect a reasonable fee, not to exceed publishing, copying, packaging, postage, and delivery costs, for publications and other information sent to any person or organization upon request, and any moneys received from such charges shall be deposited in the state treasury and credited to the department on aging's conferences and workshops attendance and publications fee fund and used to defray those costs.

Sec. 2. K.S.A. 1996 Supp. 75-5910 is hereby amended to read as follows: 75-5910. (a) Except as otherwise specifically provided by law and subject to the Kansas civil service act, the secretary shall appoint all subordinate officers and employees of the department and all such subordinate officers and employees shall be within the classified service under the Kansas civil service act.

(b) The secretary may appoint one public information officer, one chief attorney, one personal secretary and one special assistant who shall be in the unclassified service under the Kansas civil service act and shall receive compensation fixed by the secretary and approved by the governor. The secretary may appoint deputy secretaries and commissioners as determined necessary by the secretary to effectively carry out the mission of the department. All deputy secretaries and commissioners shall be in the unclassified service under the Kansas civil service act and shall receive compensation fixed by the secretary and approved by the governor.

(c) Nothing in subsection (b) shall affect the classified status of any person employed by the department on aging on the day immediately preceding the effective date of this act. The provisions of this subsection shall not be construed to limit the powers of the secretary pursuant to K.S.A. 75-5909 or 75-2948 and amendments thereto.

(d) Personnel of the department shall perform such duties and exercise such powers as the secretary may prescribe ~~such duties and powers~~ or as are designated by law.

Sec. 3. K.S.A. 1996 Supp. 75-5928 is hereby amended to read as follows: 75-5928. (a) Within the limitations of appropriations therefor, the secretary of aging is hereby authorized to establish a program of in-home services for residents of Kansas 60 years of age or older who have functional limitations which restrict their ability to carry out activities of daily living and impede their ability to live independently.

(b) The secretary of aging shall establish and administer, pursuant to the provisions of this act, a program of in-home services as authorized under subsection (a). The secretary shall designate area agencies on aging to administer the program in their respective planning and service areas. The secretary shall designate an area agency on aging to receive funds only after the area agency on aging has submitted an acceptable program plan. ~~The plan must be developed with support of a local or regional coordinating committee comprised of representatives of senior~~

1-27

PROPOSED AMENDMENT TO SENATE BILL NO. 129

by Kansas Department on Aging

February 5, 1997

Page 3

~~organizations, home health agencies and health departments, department of social and rehabilitation services offices and other interested groups.~~

(c) The program of in-home services authorized under subsection (a) shall serve such planning and service areas and provide such services as may be specified by the secretary and as are consistent with this act and with appropriation acts relating thereto. The secretary shall establish by rules and regulations the priority of services to be offered under this program. Such services shall include, but not be limited to, homemaker services, attendant care services, transportation for care services, chore services and care management services. The secretary shall follow the priorities established in specifying services under this act, but any such service or services, or combination of services, to be provided under this act shall be consistent with appropriations for such program.

(d) In establishing a program of in-home services authorized under subsection (a) and the provisions of this act, the secretary of aging may:

→→→(1) Make grants to or contracts with area agencies on aging;

(2) fix, charge and collect fees for services provided as part of such program, such fees to be fixed on a sliding scale based on the recipient's ability to pay for services and the schedule of fees shall be published annually in the Kansas register;

(3) adopt rules and regulations necessary to establish the program under this act and to administer the provisions of such program and shall adopt rules and regulations as provided under K.S.A. 75-5931;

(4) enter into contracts as necessary to carry out the provisions of this act; and

(5) take such other action as may be necessary to carry out the provisions of this act.

Sec. 4. K.S.A. 75-5932 is hereby amended to read as follows: 75-5932. Plans shall not be found acceptable unless they contain:

(a) Evidence of support ~~by a broadly representative committee of representatives of~~ *within* the planning and service area to be served;

(b) identification of service providers to be reimbursed for services;

(c) evidence that no in-home services will be directly provided by an area agency on aging; and

(d) a means acceptable for selecting clients who are most in need of the program's benefits.

Sec. 5. K.S.A. 1996 Supp. 75-5945 is hereby amended to read as follows: 75-5945.

The secretary of aging shall administer the long-term care programs and services transferred in this act. All powers granted in this act are to be interpreted and administered in conformity with federal grant requirements as applicable to programs transferred, even if such powers are limited or excluded:

(a) The secretary of aging shall develop state plans or state plan amendments or portions of state plans or state plan amendments in consultation with the secretary of social and rehabilitation services relating to long-term care programs as provided under the federal social security act. The secretary of aging shall not develop any state plan amendment in duplication of

PROPOSED AMENDMENT TO SENATE BILL NO. 129

by Kansas Department on Aging

February 5, 1997

Page 4

or contrary to any state plan otherwise developed by the secretary of social and rehabilitation services. The secretary of aging may cooperate with the federal government on any other program providing federal financial assistance and long-term care services not otherwise inconsistent with this act. The secretary of aging 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 for long-term care services. The secretary of aging may develop a state plan in regard to long-term care services in which the federal government does not participate.

(b) The secretary of aging, in consultation with the secretary of social and rehabilitation services, may determine the general policies relating to all forms of long-term care programs which are administered or supervised by the secretary of aging and to adopt the rules and regulations therefor.

(c) The secretary of aging shall adopt rules and regulations necessary to protect the confidentiality of all client information as required by federal and state statutes and regulations.

(d) The secretary of aging shall provide that all officers and employees of the department of social and rehabilitation services who are engaged in the exercise and performance of the powers, duties and functions of the programs transferred in this act and are determined by the secretary to be necessary to perform such functions are transferred to the department on aging. Officers and employees of the department of social and rehabilitation services shall retain *their classified or unclassified status and* all retirement benefits and leave rights which had accrued or vested prior to each date of transfer. The service of each such officer and employee so transferred shall be deemed to have been continuous. All transfers, layoffs and abolition of classified service positions under the Kansas civil service act which may result from program transfers shall be made in accordance with the civil service laws and any rules and regulations adopted thereunder. The secretary of aging may appoint attorneys as are necessary to effectively carry out the mission of the department and the programs transferred by this act. The attorneys appointed shall be in the unclassified service under the Kansas civil service act, shall serve at the pleasure of the secretary, and shall receive an annual salary fixed by the secretary and approved by the governor. Nothing in this act shall affect the classified status of any transferred person employed as an attorney by the department of social and rehabilitation services prior to the date of transfer and the unclassified status shall apply only to persons appointed to such attorney positions on or after the effective date of this act.

(e) The secretary of aging shall establish an adequate system of financial records. The secretary of aging and the secretary of social and rehabilitation services shall execute agreements for the department of social and rehabilitation services and the department on aging to share data systems necessary to maximize the efficiency of program operations and to ensure that federal grant requirements are met. The secretary of aging shall make annual reports to the governor and shall make any reports required by federal agencies.

(f) The secretary of aging may receive, have custody of, protect, and administer, disburse, dispose of and account for federal or private equipment, supplies and property which is

PROPOSED AMENDMENT TO SENATE BILL NO. 129

by Kansas Department on Aging

February 5, 1997

Page 5

given, granted, loaned or advanced to the state of Kansas for long-term care programs after the transfer of such programs pursuant to this act.

(g) The secretary of aging may assist other departments, agencies and institutions of the state and federal government and of other states under interstate agreements, when so requested, by performing services in conformity with the purpose of this act.

(h) The secretary of aging may lease real and personal property whenever the property is not available through the state or a political subdivision of the state for performing the functions required by this act.

(i) All contracts shall be made in the name of the "secretary of aging" and in that name the secretary may sue and be sued on such contracts. The grant of authority under this subsection shall not be construed to be a waiver of any rights retained by the state under the 11th amendment to the United States constitution and shall be subject to and shall not supersede the provisions of any appropriations act of this state.

(j) The secretary of aging, except as set forth in the Kansas administrative procedure act and paragraphs 5 and 6, shall provide a fair hearing for any person who is an applicant, client or other interested person who appeals from the decision or final action of any agent or employee of the secretary. The hearing shall be conducted in accordance with the provisions of the Kansas administrative procedure act and the requirements of any applicable federal grant programs.

(1) The secretary of aging may investigate (A) any claims and vouchers and persons, businesses and other entities who provide services to the secretary of aging or to clients served by long-term care programs under the administration of the secretary, and (B) the eligibility of persons to receive services under long-term care programs under the administration of the secretary, and (C) the eligibility of providers of services.

(2) When conducting investigations, the secretary of aging may issue subpoenas; compel the attendance of witnesses at any place in this state; compel the production of any records, books, papers or other documents considered necessary; administer oaths; take testimony; and render decisions. If a person refuses to comply with any subpoenas issued under this section or to testify to any matter regarding which the person

(3) The presiding officer may close any portion of a hearing conducted under the Kansas administrative procedure act when matters made confidential, pursuant to federal or state law or regulation are under consideration.

(4) Except as provided in subsection (d) of K.S.A. 77-511 and amendments thereto and notwithstanding the other provisions of the Kansas administrative procedure act, the secretary of aging may enforce any order prior to the disposition of a person's application for an adjudicative proceeding unless prohibited from such action by federal or state statute, regulation or court order.

(5) This appeals procedure shall not have jurisdiction to determine the facial validity of a state or federal statute, rule or regulation.

(6) The secretary of aging shall not be required to provide a hearing if: (A) the appeals

PROPOSED AMENDMENT TO SENATE BILL NO. 129

by Kansas Department on Aging

February 5, 1997

Page 6

procedure lacks jurisdiction over the subject matter; (B) resolution of the matter does not require the secretary to issue an order that determines an applicant's or client's legal rights, duties, or privileges, immunities or other legal interests; (C) the matter was not timely submitted for appeal pursuant to regulation or other provision of law; (D) the matter was not submitted in a form substantially complying with any applicable provision of laws; or (E) the matter is under the prior or concurrent jurisdiction of the secretary of social and rehabilitation services pursuant to K.S.A. 75-3306 and amendments thereto.

(k) The secretary of aging may establish payment schedules for each group of providers for the long-term care programs. The secretary shall consider budgetary constraints as a factor in establishing payment schedules so long as the result does not conflict with applicable federal law. The secretary shall not be required to make any payments under any federal grant program which do not meet the requirements for state and federal financial participation. ~~The secretary shall not be required to make any payments under any federal grant program which do not meet the requirements for state and federal financial participation.~~ The secretary shall not be required to establish or pay at rates which are in excess of the minimum necessary payment requirements regardless of excess costs incurred by a provider.

(l) The secretary of aging shall review all rules and regulations of the department on aging and shall amend and revoke the rules and regulations to conform to the purposes of this act.

(m) The secretary of aging may implement a program which would permit the value of any services provided by the area agencies on aging for the benefit of any long-term care programs administered by the secretary to be considered eligible for federal financial participation for such long-term care programs.

Sec. 6. K.S.A. 75-5908 and 75-5932 and K.S.A. 1996 Supp. 75-5910, 75-5928, 75-5945, and 75-5935 are hereby repealed.

Sec. 7. This act shall take effect and be in force from and after its publication in the statute book.

18