

MINUTES OF THE SENATE COMMITTEE ON WAYS AND MEANS.

The meeting was called to order by Chairperson Stephen Morris at 10:30 a.m. on March 22, 2002 in Room 123-S of the Capitol.

All members were present except: Senator Jean Schodorf - excused

Committee staff present:

Alan Conroy, Chief Fiscal Analyst, Kansas Legislative Research Department
Deb Hollon, Kansas Legislative Research Department
Martha Dorsey, Kansas Legislative Research Department
Leah Robinson, Kansas Legislative Research Department
Carolyn Rampey, Kansas Legislative Research Department
Julian Efird, Kansas Legislative Research Department
Paul West, Kansas Legislative Research Department
Michael Corrigan, Assistant Revisor of Statutes
Judy Bromich, Assistant to the Chairman
Mary Shaw, Committee Secretary

Conferees appearing before the committee:

John Kiefhaber, Executive Vice President, Kansas Health Care Association
John Grace, President/CEO, Kansas Association of Homes and Services for the Aging (written)
Tom Bell, Senior Vice President/Legal Counsel, Kansas Hospital Association
Tom Laing, Executive Director, InterHab
Michael Pepoon, Director, Governmental Relations, Sedgwick County
Kathleen Sexton, Assistant County Manager & CIO, Sedgwick County
Edward Williams, Reno County Administrator (written)
Judge Paul Buchanan, Chief Judge, Eighteenth Judicial District, Sedgwick County
Richard Morrissey, Office of Local and Rural Health, Department of Health and Environment
Jon Jossierand, on behalf of the University of Kansas
Pat Hurley on behalf of Dr. Robert Moser, Jr., MD, Pres., Kansas Academy of Family Physicians
Dale Brunton, Director, Accounts and Reports, Department of Administration

Others attending: See attached list

Chairman Morris continued the public hearing on:

SB 644—Medicaid payment and rate schedules

The Chairman recognized Janis DeBoer, Deputy Secretary, Department on Aging, who explained a proposed amendment to **SB 644** (Attachment 1). Ms. DeBoer explained that these changes offer a replacement for page 5 of **SB 644**. She mentioned that specifically they offer these changes to the bill as shown on the proposed amendment. Committee questions and discussion followed.

John Kiefhaber, Executive Vice President, Kansas Health Care Association, testified in opposition to **SB 644** (Attachment 2). Mr. Kiefhaber referred to the section starting on line 14, where the bill seeks to drop the requirement that reasonable and adequate costs which must be incurred be reimbursed and expressed concern regarding that language.

Thomas L. Bell, Senior Vice President/Legal Counsel, Kansas Hospital Association, testified in opposition to **SB 644** (Attachment 3). Mr. Bell explained that it was their perception that the current state law has not acted as a barrier to the Department of Social and Rehabilitation Services in setting payment schedules and the language in **SB 644** would apply to all health care providers, not just facilities.

Tom Laing, Executive Director, InterHab, testified in opposition to **SB 644** (Attachment 4). Mr. Laing noted in testimony that they must point to lines 14-22, wherein statutory language is eliminated that requires that rates cover the costs of services that conform with state and federal quality and safety standards.

CONTINUATION SHEET

Written testimony was received from John R. Grace, President/CEO, Kansas Association of Homes and Services for the Aging, in opposition to **SB 644** (Attachment 5).

Committee questions and discussion followed and the Chairman thanked the conferees for appearing before the Committee. There being no further conferees to come before the Committee, the Chairman closed the public hearing on **SB 644**.

Bill Introductions

Senator Adkins moved, with a second by Senator Jordan, to introduce two bills, one concerning municipal funded insurance pools (1rs2371) and the second concerning roads; relating to certain open roads (1rs2379). Motion carried on a voice vote.

Chairman Morris opened the public hearing on:

HB 2763–Repealing two statutes that require certain size counties to provide courtroom and supplies for district courts as the judges deem necessary

Staff briefed the Committee on the bill.

Michael D. Pepoon, Director, Government Relations, Sedgwick County, testified in support of **HB 2763** (Attachment 6). Mr. Pepoon mentioned that there are two fundamental reasons why Sedgwick County is requesting the repeal of the two statutes:

- There is no legal justification or need for having two separate set of rules governing how counties fund the district court in their counties, and
- By repealing these statutes, all counties will be governed by laws that very clearly establish the board of county commissioners as having final authority to determine and approve the budget for district court operations in their counties.

Mr. Pepoon noted that this would bring all counties under a budget procedure that closely follows state law concerning how the state legislature approves the state court's budget.

Kathy Sexton, Assistant County Manager and Chief Information Officer, Sedgwick County Government, testified in support of **HB 2763** (Attachment 7). Ms. Sexton mentioned the need to reconcile the two existing statutes. She noted that clarification the law is needed so the job of serving the public can take place.

Written testimony was received in support of **HB 2763** from Edward E. Williams, Reno County Administrator (Attachment 8).

Paul Buchanan, Chief Judge, Eighteenth Judicial District, Sedgwick County, testified in opposition to **HB 2763** (Attachment 9). Judge Buchanan explained that the County presented testimony as to what it has done for the Court and he has no problem with that. His concerns are that the testimony does not prove that the County has fulfilled its obligations to be responsible for the expenses incurred for the operation of the court in the County and referred to exhibit A of his testimony and the usage of the Court photocopiers.

Committee questions and discussion followed. Chairman Morris thanked the conferees for appearing before the Committee. There being no further conferees to come before the Committee, the Chairman closed the public hearing on **HB 2763**.

Chairman Morris opened the public hearing on:

HB 2057–Medical student scholarships and loans and medically underserved areas

Staff briefed the Committee on the bill.

CONTINUATION SHEET

Richard Morrissey, Director, Local Health and Rural Health, Department of Health and Environment, testified in support of **HB 2057** (Attachment 10). Mr. Morrissey explained that the primary purpose of the bill is to eliminate sections which provide for the medical scholarship program which has been phased out by the University of Kansas. Section I proposes transferring responsibility for publishing an annual list of medically underserved areas from the Chancellor of the University of Kansas to the Secretary of Health and Environment. He also recommended deletion of the proposed addition of "child psychiatry" to the approved postgraduate residency training programs.

Jon Josserand, Legislative Liaison, University of Kansas, testified in support of **HB 2057** (Attachment 11). Mr. Josserand explained that the bill:

- Eliminates obsolete and superfluous language related to the former Medical Scholarship Program
- Transfers from the University of Kansas, to the Kansas Department of Health and Environment, the responsibility to produce an annual report designating areas of Kansas that are medically underserved by medical specialty

Mr. Josserand noted that they call the Committee's attention to the amendment adding child psychiatry to the definition of "approved postgraduate residency training program" and suggest that it may not be consistent with the objectives of the current Medical Loan Program.

Pat Hurley testified on behalf of Dr. Robert P. Moser, President, Kansas Academy of Family Physicians, in support of **HB 2057** (Attachment 12). Mr. Hurley mentioned that the testimony distributed was that of Dr. Robert P. Moser given to the House Committee on Health and Human Services. He noted that the Family Physicians share the same concerns of the Kansas Health and Environment Department and the University of Kansas and there are still 64 counties that are critically underserved with primary care physicians. Their major concern is potentially that adding child psychiatry could take slots away right now from the program that exists to create more primary care physicians.

Committee questions and discussion followed. Chairman Morris thanked the conferees for appearing before the Committee. Senator Salmans requested information regarding child psychiatry, information regarding how many people have taken advantage of the scholarship and how many have actually returned to rural areas.

There being no further conferees to come before the Committee, the Chairman closed the public hearing on **HB 2057**.

Chairman Morris opened the public hearing on:

HB 2810—Concerning the division of accounts and reports; requiring reports to the legislature when requested

Staff briefed the Committee on the bill.

Dale Brunton, Director of Accounts and Reports, testified in support of **HB 2810** (Attachment 13). Mr. Brunton explained that the bill was proposed to eliminate, or make available upon request, reports that are no longer useful to all recipients. He also mentioned that the bill is intended to eliminate unnecessary work effort and align statutory requirements with more efficient procedures.

The Chairman thanked Mr. Brunton for appearing before the Committee. There being no further conferees to come before the Committee, the Chairman closed the public hearing on **HB 2810**.

Chairman Morris called the Committee's attention to discussion of:

HB 2900—Kansas state university, authorizing sale and conveyance of certain real estate in Riley county

Senator Feleciano moved, with a second by Senator Barone, to recommend HB 2900 favorable for passage. Motion carried on a roll call vote.

CONTINUATION SHEET

HB 2901–Kansas state university, authorizing exchange of certain real estate in Riley county with the Kansas state university foundation

Senator Feleciano moved, with a second by Senator Barone, to recommend **HB 2901** favorable for passage. Motion carried on a roll call vote.

HB 2810–Concerning the division of accounts and reports; requiring reports to the legislature when requested

Senator Feleciano moved, with a second by Senator Barone, to recommend **HB 2810** favorable for passage. Committee discussion followed.

Senator Huelskamp moved a substitute motion, with a second by Senator Feleciano, to amend the bill that for any report that is available on the internet, a hard copy would not be received and with a notice by e-mail that the report is available to all legislators, a hard copy of the report may be requested and recommend **HB 2810** favorable for passage as amended. Motion carried on a roll call vote.

SB 530--Employment after retirement

Senator Adkins moved, with a second by Senator Downey, to recommend **SB 530** favorably for passage. Committee discussion followed. Copies of the Subcommittee Report on KPERS Issues was distributed to the Committee (Attachment 14).

Copies of a letter from Glen Deck, Executive Director, Kansas Public Employees Retirement System, regarding suggested IRS Compliance Amendment to **SB 530** (Attachment 15).

Senator Adkins renewed his motion, with a second by Senator Downey, to include amendments as recommended in the Senate Subcommittee Report on KPERS Issues to allow nurses who work at institutions under the Veteran's Commission to be exempt from the earnings cap on KPERS retirees who return to work for the state, including a three-year sunset provision, the suggested IRS compliance amendment recommended by KPERS and recommend **SB 530** favorably for passage as amended. Motion carried on a roll call vote.

The meeting was adjourned at 12:15 p.m. The next meeting is scheduled for March 25, 2002.

SENATE WAYS AND MEANS COMMITTEE
GUEST LIST

DATE March 22, 2002

NAME	REPRESENTING
Kevin D. Duda John Josseland	DRS University of Kansas
PHILIP HURLEY	PATRICK J. HURLEY & CO.
Stuart Little	Kathy Dameron & Assoc.
Jack Hann	KIPERS
Glenn Deck	KPERS
Karen Watney	Day A
Barb Reavis	Office of the Governor
Mary Ellen Conlee	Via Christi Regional Med. Center
Tom Bell	KHA
Mike Huttles	Ks. Gov't. Consulting
Ashley Sherard	Johnson County
SUE PETERSON	ESTATE
John Badger	SRS
Julie Hem	Wesley Med Ctr
John Peterson	Ks Governmental Consultant
Phyllis Kelly	Kansas Adult Care Executives
Mike Pegoan	Sedgwick County
Kathy Sexton	Sedgwick County
Barbara Gibson	KDHE
Dick Morrissey	KDHE
Patrick J. Hurley	Ks Acad Family Physicians

**SENATE WAYS AND MEANS COMMITTEE
GUEST LIST**

DATE March 22, 2002

NAME	REPRESENTING
Nancy Pierce	Kans. Health Care Assn.
Fred Buchanan	18 th Judicial Dist
Kathy Porter	Judicial Branch
SHERYL WELER	DEPT. OF ADMINISTRATION
Dale Brunton	" " "
Pal Higgins	D of A
D. KEITH MEYERS	ADMINISTRATION
George Veer	SRS
Hainp	InterHab
Shannon Jones	SILCK
Dawn Husel	KDOA
Dane Halpety	KDOA
James Deh	KPSA

(x) The secretary shall establish payment schedules for each group of health care providers. Any payment schedules which are a part of the state medicaid plan shall conform to state and federal law. The secretary shall not be required to make any payments under the state medicaid plan which do not meet the requirements for state and federal financial participation.

(1) The secretary shall consider budgetary constraints as a factor in establishing payment schedules as long as the result complies with state and federal law.

(2) 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. The secretary shall not be required to establish rates for any such facility that are in excess of the minimum necessary to efficiently and economically meet those standards regardless of any excess costs incurred by any such facility. The secretary shall not be required to establish or pay at rates which are in excess of the minimum necessary payment requirements regardless of costs incurred by a provider.~~

(y) The secretary shall maintain a system of centralized payment for all welfare expenditures.

Sec. 2. K.S.A 39-708c is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book

Senate Ways and Means
3-22-02
Attachment 1



KHCA



Kansas Health Care Association

221 SOUTHWEST 33rd STREET
TOPEKA, KANSAS 66611-2263
(785) 267-6003 • FAX (785) 267-0833

TESTIMONY

Before the

SENATE COMMITTEE ON WAYS AND MEANS

By

John L. Kiefhaber, Executive Vice President

KANSAS HEALTH CARE ASSOCIATION

Chairperson Morris and members of the Committee:

The Kansas Health Care Association, representing 180 professional nursing facilities, assisted living facilities and long-term care units of hospitals, appreciates the opportunity to speak **in opposition to Senate Bill 644** concerning Medicaid reimbursement.

The action contemplated by statutory amendments in this bill are, to our caregivers, unconscionable. With this bill the state of Kansas is taking an action to reject its responsibility to help our most vulnerable Kansas citizens – those who need 24-hour hands-on care provided by licensed nurses and certified nurse aides. This is no way to balance the state's budget.

If you will refer to page 5 of the bill you will see that the first amendment drops the state's responsibility to conform payment schedules to state and federal law. Well, professional nursing facilities cannot stop conforming to state and federal law. Our facilities must conform to 512 separate regulatory requirements for each resident of a nursing home each day of the week. Meeting most of the regulations most of the days for most of our residents is not an option.

If you will refer of line 8 you will see that the secretary would not be required to pay more than the minimum necessary – nursing homes are already paid 8-10 percent less than the minimum cost of care now.

If you will refer to the section starting on line 14, the bill seeks to drop the requirement that reasonable and adequate costs which must be incurred be reimbursed. This language is meant to set the standard at the minimum cost which no facility can go below. How can we require nursing facilities to staff up to meet state and federal regulations and then say right in our law that we will not pay for the cost?

TESTIMONY

Before the

SENATE COMMITTEE ON WAYS AND MEANS

By John L. Kiefhaber, Executive Vice President

KANSAS HEALTH CARE ASSOCIATION

Page Two

Our residents are members of the Greatest Generation who have worked all their lives. Those individuals on Medicaid funding have used up their own savings for medical expenses and now need the public's help. They need professional hands-on care. They need professional hands-on care from the same person each day. They need professional hands-on care from a professional who has been trained properly to do this critical job. For the state to solve its financial management problems by risking cutbacks in staffing or training is, as I said earlier, unconscionable. Senators, do not do this.

3/21/02



Donald A. Wilson
President

March 21, 2002

To: Senate Ways and Means Committee
From: Thomas L. Bell
Senior Vice President/Legal Counsel
Re: Senate Bill 644

The Kansas Hospital Association appreciates the opportunity to comment regarding the provisions of Senate Bill 644. This bill amends statutes governing the powers and duties of the Secretary of Social and Rehabilitation Services. Specifically, SB 644 amends the law requiring the secretary to establish payment schedules for each group of health care providers serving the Medicaid program.

Current state law mirrors language that used to be contained in the federal Medicaid law called the "Boren Amendment." This law states that payment schedules for providers of hospital and adult care home services under the Medicaid plan must be "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." Notably, this law does not require payments that meet the costs of *any* provider—it allows the secretary to determine what the costs of efficiently and economically operated facilities are in setting payment schedules. Nevertheless, based on a perception that this language helped fuel increasing Medicaid costs, Congress repealed the federal counterpart. SB 644 would repeal the state language; presumably to allow the state to set payment schedules that do not meet the costs of efficiently and economically operated facilities. This is clearly indicated in the language on page 5, line 8-10, that says "The secretary shall not be required to establish or pay at rates which are in excess of the minimum necessary payment requirements regardless of costs incurred by a provider."

Given the fact that the federal law has not included this "Boren Amendment" language for several years, it is unclear to us what purpose these amendments serve. It is our perception that the current state law has not acted as a barrier to SRS in setting payment schedules. Further, unlike current statutes, the language in SB 644 would apply to all health care providers, not just facilities. At a time when the state is trying to maintain physicians and other providers in the Medicaid program, we think this amendment may send a message that will not be beneficial to the program.

Thank you for your consideration of our comments.

Kansas Hospital Association

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Senate Ways and Means
3-22-02
Attachment 3



700 SW Jackson, Suite 803, Topeka, KS 66603-3737 phone 785/235-5103, tty 785/235-5190, fax 785/235-0020 interhab@interhab.org www.interhab.org

March 22, 2002

TO: Senator Steve Morris, Chair, and
Members of the Senate Committee on Ways and Means

FR: Tom Laing, Executive Director 
InterHab: The Resource Network for Kansans with Disabilities

RE: Senate Bill 644

InterHab opposes the passage of SB 644, a bill that seeks somehow to reduce the state's well documented budget shortfall by eliminating statutory protections currently afforded vulnerable Kansans and those entities which serve vulnerable Kansans. Along with the principal victims of this bill – older Kansans – Kansans with developmental disabilities would be negatively affected by its passage.

Thank you for allowing this amended testimony, re-written in keeping with changes announced to today's hearing. However, the changes do not appear to change the significant policy considerations inherent in this bill, but do appear to "limit" the damage of this new policy to adult care homes, intermediate care facilities for persons with developmental disabilities, and hospitals. (... hardly a glowing improvement.)

Also, in reference to today's testimony, I was concerned with questions as to whether the bill might better protect SRS from lawsuits from citizens. I hope the Senate panel will not, in this instance, opt for laws that protect SRS from your citizens, but that instead you will protect the interests of citizens – especially given the vulnerability of the citizens whose interests are under attack in this bill.

Language added to the bottom of (x)(2) is an effort to create statutory justification for unconscionable rate setting practices ... i.e. allowing rates to be set irrespective of the cost of providing service.

Taken to its extreme, only three types of service providers will be left in the State:

(1) those willing to provide good services at less than the cost of service until they go out of business,

Senate Ways and Means
3-22-02
Attachment 4

(2) those who keep their doors open by ignoring the health and safety considerations of their vulnerable customers, and

(3) the State of Kansas, which will surely eventually need to open state institutions when no one is left to provide services.

We also must point to lines 14-22, wherein statutory language is eliminated that requires that rates cover the costs of services that conform with state and federal quality and safety standards. The impact of such a statutory change is surely not lost on this committee, as it will surely not be lost on all Kansans.

Kansans will see this bill for what it is, a bill to reduce funding for vulnerable citizens.

Statehouse discussions relating to tax increases tend to focus on the political liability of those who vote for tax increases. We believe something quite different. We believe most Kansans, when confronted by the needs of their vulnerable fellow citizens and those who serve them, will support tax increases that pay for needed services.

We have never heard of budget challenges so grim that they would be met with reduced safety requirements for road or bridge construction – to save money. Nor have we heard of financial straits so significant that we would allow unqualified medical personnel to perform critical medical services – to save money.

But anyone's reading of SB 644 shows that same reckless approach to the current budget challenge. It reduces health and safety protections for vulnerable Kansans – to save money.

Senate Bill 644 proposes that changing the law magically eliminates the needs of those who are protected by the current law. Words in statute books do not change the fundamental needs of vulnerable Kansans to be safely served. Such a proposal not only jeopardizes vulnerable Kansans but insults the intelligence of Kansas citizens.

We urge you to reject this bill, and to get on with the identification of the State's most critical tasks. When that task is done, we urge you to confront the reality that taxes must be raised to pay to fund those tasks.

If you confront your challenge in this way, Kansans will begin once again to respect the integrity of the state's legislative process.

TESTIMONY IN OPPOSITION TO SENATE BILL 644

By: John R. Grace, President/CEO
Kansas Association of Homes and Services for the Aging

Before: Stephen Morris, Chairman
The Senate Ways and Means Committee

Re: Senate Bill 644

Date: Wednesday, March 20, 2002

Thank you Mr. Chairman and Members of the Committee. My name is John Grace, President of the Kansas Association of Homes and Services for the Aging, a trade association representing over 160 not-for-profit retirement communities, nursing facilities and community based services for the elderly in our state. Our member's serve approximately 15,000 frail elderly Kansans everyday.

We are in opposition to the passage of Senate Bill 644.

We are most concerned that with the passage of this Bill the Legislature will have no objective standard upon which it can base its thinking about the various financial and operational components that are required to provide quality care for residents of long-term care facilities.

Because SB 644 appears to leave budgetary issues as the sole statutory consideration for setting Medicaid rates, it seems that the Secretary would be able to make decisions based purely on budgetary issues and set rates without any consideration to the variety of costs of federal/state mandates that providers are required to meet.

I have attached copies of the federal surveyor guidelines, and state regulations specifying just one of these mandates, that nursing facilities must "...provide the necessary care and services to attain or maintain the highest practicable physical, mental, and psychosocial well being in accordance with the comprehensive assessment and care plan."

Kansas Administrative Regulation 28-39-152 on Quality of Care states, "Each resident shall receive and the nursing facility shall provide the necessary care and services to

attain or maintain the highest practicable physical, mental, and psychosocial well being
.....”

As you can see, these standards are very high, and extremely demanding upon providers. We welcome a high standard, as long as the state, as a partner in this care, upholds its end of the agreement with appropriate payment for these services.

Our facilities’ operational budgets consist of nearly 65% payroll, and we are struggling to recruit and retain qualified workers who are demanding and deserve higher pay for a very difficult job. Other expenses that are increasing are food costs, insurance costs, and utilities. The Department on Aging must take into account these expenses to determine how it can assure that the quality and access for Medicaid residents are achieved.

Furthermore, fluctuations that might occur in our economy such as minimum wage law changes, economic shifts or any costs relating to nursing shortages would no longer be reflected in reimbursement rates because state law would no longer require those sorts of factors to be included in rate determinations.

States like Texas, who in the past, have had very low or minimal standards, have some of the worst nursing homes in the nation. I hope that we won’t fall into that category by basing our funding decisions solely on budgetary considerations.

The criteria currently in place do provide objective criteria that require an examination of the actual costs of operating a nursing facility prior to setting reimbursement rates. It is good public policy to maintain a minimal standard by which we can measure the quality of care and access to services for residents relying on Medicaid.

I will be glad to answer any questions.

Guidance to Surveyors - Long Term Care Facilities

Tag Number	Regulation	Guidance to Surveyors
	Quality of Care.	<i>Code of Federal Regulations - § 483.25</i>
F309	<p>Each resident must receive and the facility must provide the necessary care and services to attain or maintain the highest practicable physical, mental, and psychosocial well-being, in accordance with the comprehensive assessment and plan of care.</p> <p>Use F309 for quality of care deficiencies not covered by §483.25(a)-(m).</p>	<p>Guidelines: §483.25</p> <p>Use F309 when the survey team determines there are quality of care deficiencies not covered by §§483.25(a)-(m). "Highest practicable" is defined as the highest level of functioning and well-being possible, limited only by the individual's presenting functional status and potential for improvement or reduced rate of functional decline. Highest practicable is determined through the comprehensive resident assessment by competently and thoroughly addressing the physical, mental or psychosocial needs of the individual.</p> <p>The facility must ensure that the resident obtains optimal improvement or does not deteriorate within the limits of a resident's right to refuse treatment, and within the limits of recognized pathology and the normal aging process.</p> <p>In any instance in which there has been a lack of improvement or a decline, the survey team must determine if the occurrence was unavoidable or avoidable. A determination of unavoidable decline or failure to reach highest practicable well-being may be made only if all of the following are present:</p> <ul style="list-style-type: none"> • An accurate and complete assessment (see §483.20); • A care plan which is implemented consistently and based on information from the assessment; • Evaluation of the results of the interventions and revising the interventions as necessary. <p>Determine if the facility is providing the necessary care and services based on the findings of the RAI. If services and care are being provided, determine if the facility is evaluating the outcome to the resident and changing the interventions if needed. This should be done in accordance with the resident's customary daily routine. Use Tag F309 to cite quality of care deficiencies that are not explicit in the quality of care regulations.</p> <p>Procedures: §483.25</p> <p>Assess a facility's compliance with these requirements by determining if the services noted in the plan of care, based on a comprehensive and accurate functional assessment of the resident's strengths, weaknesses, risk factors for deterioration and potential for improvement, is continually and aggressively implemented and updated by the facility staff. In looking at assessments, use both the MDS and RAPs information, any other pertinent assessments, and resulting care plans.</p> <p>If the resident has been in the facility for less than 14 days (before completion of all the RAI is required), determine if the facility is conducting ongoing assessment and care planning, and, if appropriate, care and services are being provided.</p> <p>If quality of care problems are noted in areas of nurse aide responsibility, review nurse aide competency requirements at §483.75(e).</p>

QUALITY OF CARE

KAR

28-39-152. Quality of care. Each resident shall receive and the nursing facility shall provide the necessary care and services to attain or maintain the highest practicable physical, mental, and psychosocial well-being in accordance with the comprehensive assessment and the plan of care.

(a) Activities of daily living. Based on the comprehensive assessment of the resident, the facility shall ensure all of the following:

(1) Each resident's abilities in activities of daily living improve or are maintained except as an unavoidable result of the resident's clinical condition. This shall include the resident's ability to perform the following:

(A) Bathe;

(B) dress and groom;

(C) transfer and ambulate;

(D) toilet;

(E) eat; and

(F) use speech, language, or other functional communication systems.

(2) Each resident is given the appropriate treatment and services to maintain or improve the level of functioning as described above in paragraph (1).

(3) Any resident who is unable to perform activities of daily living receives the necessary services to maintain good nutrition, grooming, and personal and oral hygiene. The facility shall ensure all of the following:

(A) Residents are bathed to ensure skin integrity, cleanliness, and control of body odor.

(B) Oral care is provided so that the oral cavity and dentures are clean and odor is controlled.

(C) Residents are dressed and groomed in a manner that preserves personal dignity.

(D) Residents who are unable to eat without assistance are offered fluids and food in a manner that maintains adequate hydration and nutrition .



GOVERNMENT RELATIONS

Sedgwick County Courthouse
525 N. Main, Suite 365
Wichita, KS 67203
Phone: (316) 383-7552
Fax: (316) 383-7946

Michael D. Pepoon
Director

TESTIMONY HB 2763
Before The Senate Ways and Means Committee
March 22, 2002

Honorable Chairman Morris and members of the Committee, thank you for the opportunity to testify in support of HB 2763 as amended. I am the Director of Government Relations for Sedgwick County and have also been a lawyer in the County Counselor's Office for eighteen years. This bill repeals two statutes—K.S.A. 20-613a (which applies only to counties with a population of over 110,000) and K.S.A. 20-713 (which applies only to counties with a population of between 47,000 and 65,000). The former statute applies to only the state's four largest counties—Sedgwick, Johnson, Wyandotte and Shawnee—and the latter applies only to Reno, Butler, Saline and Riley counties. The bill as amended inserts language in K.S.A. 20-348 to require all counties to *adequately fund* the operation of the district court.

There are two fundamental reasons why Sedgwick County is requesting the repeal of the above statutes. In the first place, there is no legal justification or need for having two separate set of rules governing how counties fund the district court in their counties. Secondly, by repealing these statutes, all counties will be governed by laws that very clearly establish the board of county commissioners as having final authority to determine and approve the budget for district court operations in their counties. This would bring all counties under a budget procedure that closely follows state law concerning how the state legislature approves the state court's budget.

The statute that applies only to the largest four counties was first adopted in 1931 and provides that the county commissioners shall provide "...books of records, blanks, stationery, supplies, furniture and equipment *as in the judgment of the judge or judges shall be necessary* for the proper conduct of the business of each division of the court (emphasis added). The statute applying to all counties (K.S.A. 20-349) provides that the chief judge in each judicial district is responsible for preparing and submitting a budget to the board of county commissioners "...*who shall then have final authority to determine and approve the budget* for the district court operations payable by their county." Obviously these two statutes are in direct conflict in determining who has final budget authority for the district courts in these counties.

"...To Be The Best We Can Be."

Senate Ways and Means
3-22-02
Attachment 6

This issue came to a head in Sedgwick County during the 2002 budget process. There was a hearing on May 25 of last year before the county commissioners concerning supplemental budget requests by county departments, elected officials and the district court. The Eighteenth Judicial District submitted a supplemental budget request for \$493,900. Upon completion of the Court's presentation Judge Buchanan approached the county commission bench and presented the Commission Chair with a hand-written order directing the county to fund the entire supplemental budget. The county commission directed budget staff to work with the district court's budget analyst and this figure was trimmed down to \$68,000. All that remained was a request for two copy machines, some furniture and "other professional services." The county commission adopted a budget on August 8, without the additional \$68,000. On August 9, Judge Buchanan served each county commissioner with a restraining order preventing the board of county commissioners from certifying the 2002 budget and an affidavit and citation in contempt for violating his order of May 25. The county commissioners were ordered to appear before Judge Buchanan and show cause why they "... should not be found in contempt, fined as appropriate and placed in the custody of the Sheriff of Sedgwick County." Because of the action taken by Judge Buchanan, Sedgwick County was placed in the unfortunate position of having to file a lawsuit in the Supreme Court of the State of Kansas to stay the contempt proceedings.

Eventually Sedgwick County gave the district court an additional \$45,000 to settle the lawsuit. One of the reasons the county commission settled the lawsuit and felt compelled to give in to the district court is that there was no clear legal guidance as to how the conflicting statutes could be resolved. This had the both the potential of creating bad law for all legislative bodies in the state of Kansas as well as subjecting the county commissioners to stiff civil penalties and possible jail time should Sedgwick County lose the lawsuit.

No legislator should be subject to contempt of court proceedings for exercising his or her constitutional right as a citizen and obligation as a public official to vote on matters of public importance—such as setting a budget. Even though judges in Sedgwick County are elected, it is the responsibility of the board of county commissioners to decide to raise or lower taxes and be accountable to the voters and taxpayers of the County.

In summary:

- There is no reason to treat 8 counties differently from the remaining 97 when it comes to determining the district court's budget.
- The legislative body (board of county commissioners) should have the final determination in setting the budget for the district court.
- The Eighteenth Judicial District in Sedgwick County is adequately funded.

For the above reasons we respectfully ask for your support of HB 2763 as amended.

Supplemental Requests – District Court

18th Judicial District

1. \$21,500 - Microfilm Processor
Replacement of broken equipment
2. \$50,400 – Copier/Fax/Printer
Replacement of broken equipment
3. 30,000 – Furniture Replacement
Replacement of old and broken furniture for new judges
4. \$180,000 – PC Replacement
Replacement of old PC's that are no longer under warranty
5. \$90,000 – Workstations for adult probation
6. \$17,000 – New case management and latest technology training fund
7. \$85,000 – Upgrade to most current software
8. \$20,000 – Other professional services
Department requests to raise Pro Team salaries to \$300/day and increase in interpreter services

Discussion of Requests:

Recommending denying the request. Funding can be allocated within the operating budget. The requesting materials did not provide sufficient information for a meaningful evaluation of projects. Budget staff was not able to ascertain the return on the \$493,900 investment requested by District Court. Furthermore, the case management system may change some of the processes in District Court operations. Additional investment may not be prudent before the completion of the case management system project.

*The above eight items shall be included
in the District Court budget for 2001*

By the Court

*Paul Bulman
Chief Judge
May 25, 2001*

FILED 110

IN THE MATTER OF THE BOARD OF COUNTY COMMISSIONERS IN THE COUNTY OF SEDGWICK BUDGET FOR THE EIGHTEENETH JUDICIAL DISTRICT FOR THE YEAR 2002

NOV 2 2001

18th JUDICIAL DISTRICT SEDGWICK COUNTY KANSAS

In Re 01 AJ2

RESTRAINING ORDER

Upon the facts in the Citation for Contempt, Carolyn McGinn, Betsy Gwin, Tim Norton, Tom Winters and Ben Sciortino, as members of the Board of County Commissioners of the County of Sedgwick are enjoined from certifying the 2002 County Budget until further order of the Court.

Paul Buchanan
Paul Buchanan
Chief Judge

Certificate of Clerk of the District Court. The above is a true and correct copy of the original instrument which is on file or of record in this court.

Dated this 10 day of May 2001
CLERK OF THE DISTRICT COURT
18th JUDICIAL DISTRICT
SEDGWICK COUNTY, KANSAS
By *[Signature]*



FILED

me

IN THE MATTER OF THE BOARD OF COUNTY COMMISSIONERS IN THE COUNTY OF SEDGWICK BUDGET FOR THE EIGHTEENTH JUDICIAL DISTRICT FOR THE YEAR 2002

AUG 9 2 15 PM '01
CLERK OF DISTRICT COURT
SEDGWICK COUNTY, KANSAS

In Re *01 AT 2*

AFFIDAVIT IN CONTEMPT

Heretofore, on May 25, 2001, the undersigned as Chief Judge of the Eighteenth Judicial District ordered the Board of County Commissioners to include certain items in the 2002 budget for the Eighteenth Judicial District. The Board of County Commissioners in adopting the 2002 budget did not include the following items in the budget as ordered:

- Microfilm processor
- Other Professional Services

Two items were funded in part as follows:

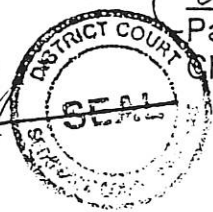
- Copier/Fax Printer
- Furniture

The failure to include such items in the budget constitutes a violation of the undersigned's order of May 25, 2001, a copy of which is attached marked as Exhibit A.

The members of the Board of County Commissioners of the County of Sedgwick are Carolyn McGinn, Betsy Gwin, Tim Norton, Tom Winters and Ben Sciortino.

The foregoing statements are true under the law of perjury of the State of Kansas.

Certificate of Clerk of the District Court. The above is a true and correct copy of the original instrument which is on file or of record in this court.
Dated this 10 day of Aug, 19 2001
CLERK OF THE DISTRICT COURT
18th JUDICIAL DISTRICT
SEDGWICK COUNTY, KANSAS
By [Signature]



[Signature]
Paul Buchanan
Chief Judge

IN THE MATTER OF THE BOARD OF COUNTY
COMMISSIONERS IN THE COUNTY OF SEDGWICK
BUDGET FOR THE EIGHTEENTH JUDICIAL
DISTRICT FOR THE YEAR 2002

Mfe
2 20 PM '01

CLERK OF DISTRICT COURT
18TH JUDICIAL DISTRICT
SEDGWICK COUNTY, KANSAS

In Re *01 AJ 2*

CITATION FOR CONTEMPT

The State of Kansas to:

Carolyn McGinn, Chair
Betsy Gwin
Tim Norton
Tom Winters
Ben Sciortino

as members of the Board of County Commissioners of the County of Sedgwick.

A Citation for Contempt having been filed shows a violation of the undersigned's order as Chief Judge of May 25, 2001. Each of you are hereby ordered to appear before the undersigned on the 24th day of August, 2001, at 2:00 p.m. in Courtroom 11-1, Sedgwick County Courthouse, and show cause, if any there be, why you should not be found in contempt, fined as appropriate and placed in the custody of the Sheriff of Sedgwick County, and be held by him until such commissioners comply with the orders of the undersigned Chief Judge

Clerk of the District Court. The above is a true and correct copy of the original instrument which is on file in the office of the Clerk.

Dated this 10 day of Aug, 19 2001

CLERK OF THE DISTRICT COURT
18th JUDICIAL DISTRICT
SEDGWICK COUNTY, KANSAS

By _____

[Handwritten signature]



[Handwritten signature]
Paul Buchanan
Chief Judge





SEDGWICK COUNTY, KANSAS
DIVISION OF INFORMATION & OPERATIONS
Kathleen B. Sexton, Assistant County Manager & CIO

538 North Main ~ Wichita, KS 67203
Phone: 316-383-7968 Fax: 316-383-7673
Email: ksexton@sedgwick.gov
www.sedgwickcounty.org

Sedgwick County's Commitment to the 18th Judicial District
Testimony to the Senate Ways & Means Committee
HB 2763, as Amended
Friday, March 22, 2002

Good morning Chairman Morris and Committee members. I am Kathy Sexton, Assistant County Manager & Chief Information Officer for Sedgwick County Government. Thank you for having us here today. As a former budget analyst at the Division of the Budget, it is good to be back in the Capital. I bring greetings from Sedgwick County's five elected County Commissioners and our County Manager, Bill Buchanan.

The purpose of my testimony is to say the County believes the 18th Judicial District is adequately funded. The County provided a 2002 operating budget for the Court of \$1,994,146. This is 3.9% more than in 2001, and this followed a year of 4.9% growth and a year of 20.9% growth. This budget pays for direct operating expenses of the Court. As you know the Legislature provides a budget for judges and staff.

In addition, Sedgwick County spends a great deal more in other parts of the County's operating budget to support the 26 judges and their court operations, including utilities, maintenance, mail, and custodial services for the Courthouses. In 1997, at the request of the judges, we added a Courthouse Security Department to scan entrants into the buildings for weapons and to respond to judicial needs that occur during court proceedings or in public areas. This department's operating budget in 2002 is \$943,373.

The third primary way in which we support the Court is through capital improvements. In August 2001, the County Commission approved a \$7.6 million plan for projects benefiting the Courts. This aggressive 2002-2004 plan for facility improvements complements past spending of \$2.3 million (1994-2001) to achieve the following enhancements:

- Updated various courtrooms, chambers, and support offices.
- Created a Courthouse Records Center to better store records and evidence.
- Renovated the exterior of the Courthouse.
- Renovating Courthouse elevators.
- Replacing Courthouse roof.
- Renovated exterior of the Historic Courthouse.
- Updated directional signage inside and outside of the Courthouse.
- Major maintenance including carpet, blinds, and paint.
- Remodeling 5th floor (former jail) to courtrooms, jury rooms, and chambers.

"Quality Service in a Timely Fashion at a Reasonable Cost"

*Senate Ways and Means
3-22-02
Attachment 7*

- *Planning expansion of Juvenile Court building.*
- *Modernizing the Jury Room.*
- *Remodeling Traffic Department, Probation Intake, and PreSentence Investigation.*
- *Planning to remodel Court Clerk offices on four floors.*

The final way in which we support the Court is through technology. In 1999, the Board of County Commissioners approved \$1.1 million for a new case management system for the Court. Our commitment was for software, hardware, and technical support, and we are working cooperatively with state staff to create a system that can be used statewide. Sedgwick County is leading this effort because we are committed to our role in providing justice services.

Given our commitment to funding an operating budget, support services, facilities, and technology, the issue at hand appears to be one of accountability and power. Should the Court explain its needs and justify its budget requests with information, in a manner similar to that of the elected sheriff, the elected district attorney, and all other elected and appointed officials for whom the County has a legal responsibility to approve a budget?

Sedgwick County is proud of our history of working with elected officials to meet their resource needs and provide essential services to our community. Negotiation and compromise is often engaged in, since needs are perceived differently by the various parties.

Or, does the law require us to open the checkbook for WHATEVER amount the Court says it needs, without weighing needs against the ability of the taxpayers to pay? Are judges elected to dispense justice using the resources provided by the legislative branch, or were they elected to also set their own budgets regardless of other law enforcement and public service needs and regardless of the electorate's ability to pay?

Please, help us clear up the muddy waters of these conflicting statutes. We are not asking you to settle a petty dispute between a few people who can't get along. This is a matter of law. We need clarification in the law, so we can all do our jobs of serving the public. Thank you. I am open to any questions you may have.



COUNTY COMMISSION

RENO COUNTY
206 West First Avenue
Hutchinson, Kansas 67501-5245
(620) 694-2929
Fax (620) 694-2928
TDD (800) 766-3777

State of Kansas
Senate Ways and Means Committee
March 22, 2002

RE: HB 2763

Honorable Chairman Morris and Members of the Ways and Means Committee, on behalf of Reno County, I am here to state our support for HB 2763 in order to repeal the provisions of K.S.A. 20-613a and 20-713, the latter of which currently applies to Reno County. These two statutes apply only to a few counties - those over 110,000 population and those between 47,000 and 65,000 population. In these counties, the Board of County Commissioners, unlike most legislative bodies, including the State of Kansas Legislature, cannot establish the budget for the courts.

This is not only contrary to the general practice in Kansas described in K.S.A. 20-349 but also detrimental to the traditional powers of such a body. The Board of County Commissioners is responsible for the overall budget and fiscal condition of the county, but seemingly cannot control one budget - the courts. The Kansas State Legislature is struggling with recent changes in our economy but one budget at the county level can jeopardize certain counties' obligations to tailor the entire budget to the demands of the electorate as well as changes in the economy.

Please understand that, at least in recent years, Reno County has not experienced any fiscal problem related to this lack of budgetary control over the courts. However, this lack of control over one area alone, such as computerization, could dramatically change this situation and, at the same time, prevent our having a budget which reflects the impact of the economy and our sensitivity to the burden placed upon property owners.

Thank you for your consideration of this important issue to counties.

Edward E. Williams
Reno County Administrator

Senate Ways and Means
3-22-02
Attachment 8

Testimony on House Bill No. 2763
By Paul Buchanan, Chief Judge,
Eighteenth (Sedgwick County) Judicial District

Members of the Committee:

Thank you for the opportunity to appear at this hearing on House Bill No. 2763, as amended by the House of Representatives.

My position is that K.S.A. 20-613a and K.S.A. 20-713 should be amended to apply to all counties in the state rather than to a limited number of counties. These sections were passed at times in the past to apply to local situations. From my conversations with other chief judges throughout the state, they all have a problem with county commissions understanding their obligations to fund the operations of the district court of their county.

The chief judge of a county is there by virtue of his or her selection by the constitutionally mandate method of that judicial district. The judge is responsible to the electors of the district for his or her conduct. Furthermore, the judge answers to all the voters of the county and not to the voters in a specific commission district. The chief judge holds the position of chief judge by virtue of an order from the Supreme Court, which receives input from the public in making the appointment.

The district court is government. The district court is not a social program. The district court is the local representation of the third branch of state government. The district court is not a local agency.

The courts have the power to protect themselves. They have the power of contempt. They have the power to make mandatory orders for their protection and for their operations.

The county presented testimony as to what it has done for the court. I have no problem with this testimony. The testimony does not prove that the county has fulfilled its obligations to "be responsible for the expenses incurred for the operation of the court in the county." I have been asking for copying machines for the last six years. Even after the order of last year I still need copying machines. Look at Exhibit A, which is a listing of the copying machines of the Eighteenth Judicial District. Four of the machines will be replaced this year, but I will still have five copying machines, which are not serviceable on manufacturers service contracts. It also appears that during this year three machines will be added to the list of copying machines without factory service.

The county talks about my order. I offered to settle the controversy on copying machines by a trade of two of the court machines (which the county had considered so good that they did not need replacing) to the county for two equivalent machines, which the county was using. I never received a reply. The county has no systemized plan to replace any of the court's equipment. The obligation of the county is mandatory. It is not discretionary.

Senate Ways and Means
3-22-02
Attachment 9

The county claims that the court order upsets the budgeting process. Yes, it makes the county aware of its obligation, but the court budget is less than one per cent of the total county budget. The court could not spend two per cent of the county budget.

The judge pro tems hear small claims cases and act in the absence of the judges. The last pay raise, the pro tems was in about 1989. During the late 90's we actually reduced pro tem pay. They had been paid as employees, which included one-half of the social security. With a county request to reduce expenses, the pro tems were made contract employees, which made them pay total self-employment tax on their earning.

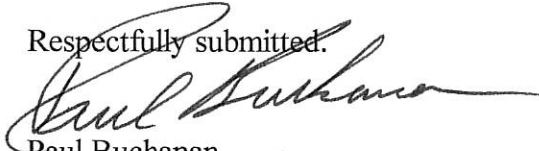
The county talks a lot about its power under K.S.A. 20-349, while ignoring the mandate of the preceding section (K.S.A. 20-348). I have no problem with their interpretation of K.S.A. 20-349 as to the finality of the budget. The budget is the final determination of the budgeting process. No order ordering county expenditure can be made after the budget is adopted if the order could have been made before the budget was adopted.

The county objects to the court's use of the contempt power. Contempt is how the courts enforce their orders. The court is required to state the maximum penalty that can occur, but in the exercise of the contempt power, the court may use only such power as is necessary to secure compliance with the court's order.

By the repeal of the language setting minimum budget, under the county's interpretation, they can set the budget at any amount and the court has no recourse. They can say that by buying a Big Chief tablet they have complied with their obligation. The law now before this committee, as amended by the House of Representatives, sets an affirmative duty on the Board of County Commissioners to fund the operations of the District Court, which may be enforced by court order. I would prefer the language to be much more definite, as I stated before, I would prefer the existing laws be amended by updating and making it apply to all counties, but, as amended, I can assure that the Court will be funded.

If the counties refused to update the District Courts, I can see what has happened in other states, that this will be a first step in county consolidation.

Respectfully submitted.



Paul Buchanan
Chief Judge
Eighteenth Judicial District
Wichita, Kansas

DISTRICT COURT COPIER REPORT

EXHIBIT A.

9-3

	PRODUCT TYPE	MAKE	*	MODEL	ID #	LOCATION	DATE INSTALLED	TOTAL COPIES AS OF 2/14/02	COPIES PAST 6 MONTHS	AVG COPIES PER MONTH
1	Copier	RICOH	*	FT6620	20033	Adult Probation	8/4/88	1,322,532	33,286	5,548
2	Copier	RICOH	*	FT4430	21185	Juvenile CINC	10/31/89	810,594	1200	200
	Copier	RICOH	*	FT3320	90464	Adult Intake	11/22/89	236,641	5,382	897
2	Copier	RICOH	*	FT4430	40478	Civil Assignment 6 th	11/22/89	201,680	2,964	494
	Copier	RICOH	*	FT5540	00306	Court Reporters	12/1/91	706,412	14,514	2,419
1	Copier	RICOH	*	FT5540	00349	Probate	12/1/91	1,074,335	46,218	7,703
	Copier	RICOH	*	FT4415	80176	Traffic	12/1/91	155,627	8,124	1,354
	Copier	RICOH	*	FT5540	00324	Small Claims Clerk	2/7/92	1,163,245	18,192	3,032
	Copier	RICOH	*	FT6750	8423C	Juvenile Clerks	3/1/92	1,839,092	25,326	4,221
	Copier	RICOH		FT6645	8108E	10 th Floor Aides	2/26/96	1,029,501	50,586	8,431
	Copier	RICOH		FT6665	8134E	Family Law/ Criminal	2/26/96	1,896,966	147,882	24,647
	Copier	RICOH		FT6665	8149E	Civil	9/30/96	1,951,986	163,320	27,220
	Copier	RICOH		FT5570	AB228	Jury Room	5/15/98	621,798	21,870	3,645
	Copier	SHARP		2040	7650491Y	Juvenile CINC	9/10/98	398,798		9,495
	Copier	PITNEY BOWES		C500	13641	Juvenile Clerks	9/10/98	927,286		22,078
	Copier	PITNEY BOWES		C500	13764	Family Law Judges 4 th	5/13/99	146,679		4,314
	Copier	XEROX		332SLX	KM9025100	Administration	11/7/00	96,899		6,056
	Copier	XEROX		332SLX	KM9001436	Family Court Services	11/7/00	54,055		3,378
	Copier	XEROX		230SX	HE0006684	P.S.I.	11/7/00	253,870		15,866
	Copier	XEROX		230SX	HE0005614	Records/Appeals	11/7/00	313,226		19,576
	Copier	XEROX		425ST	EYF1185	Juvenile CSO's	11/27/01	20,524		6,481

1 - To be replaced with copiers on order

Budget has funds for four copiers - two are on order

2 - Copiers not working

* - Indicates machine is no longer eligible for service agreement as of 1/1/02



KANSAS

DEPARTMENT OF HEALTH & ENVIRONMENT

BILL GRAVES, GOVERNOR

Clyde D. Graeber, Secretary

Testimony on HB 2057

to

Senate Committee on Ways and Means

Presented by Richard Morrissey

KDHE Office of Local and Rural Health

March 21, 2002

Chairperson Morris, and Members of the Committee, I am pleased to appear before you today to discuss House Bill 2057 which, in repealing existing sections which established the medical scholarship program, will also eliminate the need for many additional administrative requirements under which it operated.

Since the late 1970s, Kansas has been concerned about serious physician shortages and chronic recruitment difficulties in rural Kansas. A methodology was developed to identify areas with an inadequate supply of physicians and a program was implemented to provide medical scholarship for KU medical students in exchange for their agreement to work off their obligation in a State designated Medically Underserved Area (MUA).

During the mid-1980s, the Kansas University Medical Center (KUMC) was given the statutory mandate (KSA 76-375) to prepare, on or before December 31 in each year, a list of areas in the state determined to be underserved and critically underserved based upon supply of physicians. The original purpose was to determine the most medically needy areas and to award scholarships to medical students who were willing to practice in those areas.

Subsequent statutory changes eliminated the need for the two categories of medical underservice (Underserved and Critically Underserved) and medical students with scholarship obligations are now permitted to serve anywhere in Kansas except for a short list of urban counties. With the proposed elimination of the scholarship program, assessment and publication of a report identifying the medically underserved and critically medically underserved areas is no longer needed.

In 1989, federal changes to the Rural Health Clinics Act allowed areas declared medically underserved by the State Governor to be eligible for the development of rural health clinics. A Rural Health Clinic (RHC) is a statutorily defined entity, federally created in the mid-70s to address rural health care provider shortages through better reimbursement mechanisms. To be a RHC, an outpatient clinic must: 1) be located in a rural area; 2) be located in an area designated as underserved; 3) employ a mid-level provider not less than 50%

of the time; and 4) meet some minimum standards for services provided and physical facility. Clinics meeting these criteria, as determined by a state survey, are issued a Medicare number resulting in their eligibility to receive cost-based reimbursement for Medicare visits.

After the 1989 changes, using the MUA report and other types of designation, the Office of Local and Rural Health enabled 98 counties or parts of counties to be declared eligible for rural health clinic development. Starting with only one in 1990, there are currently 155 rural health clinics and a significant local reliance on the benefits available to service areas with HPSA (Health Professional Shortage Area) and MUA/P designation (Medically Underserved Areas/Populations). Those counties and cities designated several years ago have now all been through a cycle of renewal evaluation and application processing. At the same time, more difficult sub-population applications are requiring more complex statistical evaluation and greater analytic skills; and additional health professional shortages are demanding additional time and attention, e.g. oral health and mental/behavioral health providers.

Although the need no longer exists for a designation methodology and report for operation of a state medical scholarship program, maintaining a flexible mechanism for physician shortage area identification is important as new uses emerge for the designation status “medically underserved area.”

The primary purpose of the bill is to eliminate sections which provide for the medical scholarship program which has been phased out by the University of Kansas. Section I proposes transferring responsibility for publishing an annual list of medically underserved areas from the Chancellor of the University of Kansas to the Secretary of Health and Environment.

In order to maintain the original purpose of the program, to improve the supply of primary care providers in underserved areas, we recommend deletion of the proposed addition of “*child psychiatry*” to the approved postgraduate residency training programs in Sec. 7. K.S.A. 2001 Supp. 76-381 (page 9, line 17) which reads:

(b) “approved postgraduate residency training program” means a residency training program in general pediatrics, general internal medicine, family medicine, family practice, *child psychiatry* or emergency medicine;

KDHE supports the proposed legislation and recommends that the committee report Substitute for HB 2057 favorably for passage.

Thank you for the opportunity to appear before the Committee and I will gladly to answer any questions.

Testimony: Substitute for House Bill 2057
Senate Committee on Ways and Means
March 21, 2002

Mr. Chairman, members of this Committee.

My name is Jon Josserand and I am here on behalf of the University of Kansas as a proponent to House Bill 2057.

The bill had its origins in the Health Care Reform Legislative Oversight Committee. It was passed by the House Health and Human Services Committee last year and got lost among more significant legislation during near the end of the session last year. It was saved late in the session, and re-referred to the House Health Committee. This year it was amended so that the proposal conformed to statutes which were amended by last year's session.

In the interests of time, I will try to be very short. The bill does three things:

- 1) It eliminates obsolete and superfluous language related to the former Medical Scholarship Program. As introduced, the bill has no effect on the current Medical Loan Program. (But note item 3)
- 2) It transfers from the University of Kansas, to the Kansas Department of Health and Environment, the responsibility to produce an annual report designating areas of Kansas that are medically underserved *by medical specialty*. This report was used in conjunction with the former Medical Scholarship program, which no longer exists. KUMC has no particular need to compile this report, and KDHE has an interest in preparation of this report in the future for programs in their Office of Rural Health.
- 3) The House Committee last year added an amendment at page 9, line 17. The amendment added *child psychiatry* to the definition of "*approved postgraduate residency training program*" for the Medical Loan Program. We would respectfully call this committee's attention to this amendment, and suggest that it may not be consistent with the objectives of the current Medical Loan Program.
 - a. Since its inception, the Medical Loan Program has focused on *primary care* residency programs, including pediatrics, internal medicine, family medicine, family practice or emergency medicine, *not* medical specialties such as surgery, cardiology, or psychiatry.
 - b. Technically speaking, there is no such thing as a residency in child psychiatry. Instead, physicians desirous of this specialty seek a post-residency fellowship after completion of their regular residency in general psychiatry.

Senate Ways and Means
3-22-02
Attachment 11

Testimony: House Bill 2057
House Health and Human Services Committee
January 31, 2001

Mr. Chairman, Members of this Committee:

My name is Marlin Rein and I am here on behalf of the University of Kansas in regards to House Bill 2057.

House Bill 2057 would ostensibly repeal the Medical Scholarship Program which was administered by the University of Kansas Medical Center. The original scholarship legislation was enacted in 1978. In its original form, the Scholarship Program was open-ended and available to any student who wished to participate. Two types of scholarships were available. A Type One scholarship provided tuition and a \$500 per month stipend and required a year-for-year service obligation in an area in Kansas designated as medically underserved for the physician's medical specialty. A Type Two scholarship provided only the payment of tuition, but the student could satisfy the obligation any place within the State of Kansas.

In subsequent years, the scholarship law was continually changed, typically to more narrowly limit the service options that a medical student had. In the last years of the scholarship program's existence, the student was obliged to select a medical specialty in primary care and could satisfy the service obligation by practicing anywhere in the State of Kansas other than the counties of Sedgwick, Shawnee, Wyandotte, Johnson and Douglas.

In 1992 the Legislature enacted the Medical Loan Program which was basically a re-titling of the former scholarship program with enriched financial incentives. The limitations on specialty selection and service location were similar; select a primary care specialty and practice in a non-urban area of the State. The Medical Loan Program has basically remained unchanged since its enactment in 1992.

With few exceptions all the medical scholarship recipients have either satisfied their service obligation or are in the late stages of satisfying their financial obligations to the State. For that reason, it is appropriate to repeal those statutes related to the Medical Scholarship Program. One element of the original scholarship law was the requirement that the University annually produce a report designating areas of Kansas which are medically underserved by medical specialty. With the changes that occurred in the mid-eighties limiting specialty selection to primary care and altering the service location requirements, the need for this report in the administration of the Scholarship Program was effectively eliminated. House Bill 2057 would continue the report but transfer responsibility for its preparation to the Department of Health and Environment. We support this change.

I thank you for the opportunity to appear today. I would be pleased to stand for questions.



Robert P. Moser, Jr., MD
President

Richard M. Glover, II, MD
President-Elect

Carol A. Johnson, MD
Vice President

Vertin K. Janzen, MD
Secretary

Todd A. Miller, MD
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Rick D. Kellerman, MD
AAFP Delegates

Diane D. Klingman, MD
Dennis D. Tietze, MD
Alternate Delegates

Joe D. Davison, MD
Pam D. Harrison, MD
Brian Holmes, MD
Mary Beth Miller, MD
Erik Sandstrom, MD
Steven Scheufler, MD
Paul D. Wardlaw, MD
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KAFP-Foundation President

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Resident Representative

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To: House Committee on Health & Human Services
From: Robert P. Moser, Jr., MD, President
Re: HB 2057, Medical Student Loan Repayment Program

Chairman Rep. Boston, Vice Chairman Morrison, committee members and staff: Thank you for the chance to provide testimony on HB 2057. I am writing today in support of HB 2057, with one suggested change.

I am currently the President of the Kansas Academy of Family Physicians. I practice in Tribune, am a previous Kansas Medical Scholarship recipient, graduate of KU School of Medicine, and did my residency at the Smoky Hill Family Practice Residency Program.

The KAFP represents the family physicians of the state, and we are the largest medical specialty in Kansas. We have about 780 active practicing members, and about 140 resident members in Kansas. Family practice is the medical specialty that provides continuing and comprehensive health care for each member of the family. A family physician is a doctor who is educated and trained to provide medical care for any patient, regardless of sex, age or type of problem. Unfortunately, we still do not have enough family physicians to care for the primary care needs of the state.

Family practice is the only medical specialty that is geographically distributed in much the same manner and proportion as the population. Specifically, 25% of all Americans live in rural areas and the same percentage of family physicians locate there. But there is a shortage of family physicians in Kansas. There are currently 64 counties medically underserved as determined by the Kansas Department of Health and Environment. Another study, by the Robert Graham Policy Center for Policy Studies, further illustrates this fact. They looked at what happens to underserved areas if various specialties were hypothetically removed from the state. Their findings show that if you removed all the family physicians from the state, leaving all other physicians, including other primary care physicians, all the counties in Kansas except the three major metropolitan counties would become underserved. That would be 102 of the 105 counties of our state. So you see that our specialty provides the backbone of primary care physicians for Kansas.

Since its inception in 1978 and major modification in 1992, the Kansas Medical Student Loan Program has helped produce many primary care physicians for Kansas. As you know, the Medical Student Loan Program provides a monthly stipend of up to \$1,500 for students at the University of Kansas School of Medicine in return for entering a primary care specialty and practicing in non-urban Kansas. Thirty students are selected each year as they enter medical school, with a total of 120 students on the Loan Program each year. Failure to satisfy the service commitment requires repaying the loan back plus 15% interest. These Loan Repayment Funds are then used along with State General Funds to maintain this program.

The Kansas Medical Student Loan Program is successful. That means that more students are fulfilling their obligations by service in underserved areas, and fewer are paying back with dollars that are then recycled to support this program. In this year of tightening belts and fiscal constraints, that means that the program is already financially threatened. If the State General Funds for the next fiscal year remain at the 2002 levels, then only 15 slots will be supported.



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We're grateful that the Governor has included funds for the program in his budget, to increase the state funding to maintain the current level of 30 slots. We will be watching the budget process closely to see that the funding is not lost. Any decrease in loan program slots would mean fewer graduating physicians choosing primary care as a specialty and fewer doctors practicing in underserved areas of Kansas. That is why we cannot support the addition of child psychiatry to the list of approved primary care residencies that can payback their obligation by service.

One recent Family Medicine graduate is Mary Beth Miller, MD, from St. Francis, Kansas, who is the co-chair of our legislative committee. You may have met her last Thursday evening during our reception. Mary Beth is out in the far northwest part of the state, and she wrote a note about this issue, stating, "I agree that as a primary care doctor, I would like to have access to a child psychiatrist out in western Kansas. As it stands, Dr. Larry McDonald comes out to Hays from Kansas City once a month, and he gets pretty booked. However, those services aren't needed that frequently in the overall scope of care for rural areas. To give up a slot from the Kansas Medical Student Loan Program for that small aspect of healthcare will then deprive a bigger element of primary care, which is needed more urgently. So while it is important, that need could be taken care of if more of the specialists from urban areas would provide coverage as Dr. McDonald does one day a month. Primary care is needed every day, and can't be done on an interim basis." She clearly states the practical difference between primary care and other specialty care in rural Kansas. Primary care is needed every day. Other specialists' services are available on an interim or commuting basis. It's certainly not optimal, but it can work.

If loan program slots are taken from primary care, the effect will not be seen for 7 to 8 years. It's a long pipeline, due to the length of postgraduate training in a primary care specialty. According to data from the American Medical Association and the American Academy of Family Physicians, the current average age of Family physicians in Kansas is 45 years old. The decrease in graduating family physicians will coincide with a group closing in on retirement, further amplifying the current shortage problem. As I mentioned earlier family physicians are geographically distributed in much the same manner and proportion as the population. As the population in rural areas ages, so do the family physicians caring for them, unless we continue to infuse new graduates coming into practice.

We recommend that you delete the amendment adding child psychiatry – not because we don't need their assistance, but because it is available through interim arrangements such as what Dr. Miller has suggested. The Medical Student Loan Program has, and will continue to serve well to encourage primary care physicians to locate in the non-urban areas of our state. It was not designed for other specialists. We urge you to keep it focused on primary care specialties. Thanks again for this opportunity to present written testimony.

Sincerely,

Robert P. Moser, Jr., MD
President

**TESTIMONY BEFORE THE
SENATE WAYS & MEANS COMMITTEE
March 22, 2002, 10:30 a.m., Room 123-S**

Presented by Dale Brunton, Director of Accounts and Reports

Chairman, Members of the Committee:

I am providing testimony today on behalf of the Department of Administration in support of House Bill 2810, proposed to eliminate, or make requestable, reports that are no longer useful to recipients. The bill is intended to eliminate unnecessary work effort and align statutory requirements with more efficient procedures.

House Bill 2810 modifies two unrelated reporting requirements of the Division of Accounts and Reports. Currently, a report is created annually regarding claims paid by state agencies and is required to be submitted to the Senate Ways and Means Committee, the House Appropriations Committee, and to the Joint Committee on Special Claims Against the State. Proposed amendments would allow the report to be created only upon request of the legislature or legislative branch agencies. Legislative staff confirmed that this report is not currently reviewed or used. In FY 1980, when the claims law was implemented, the report may have been a valuable tool for reviewing the claims history for the year. However, over 20 years later, it appears that the report is no longer needed on a regular basis. The report requires approximately 36 to 40 hours of an accountant's time to compile and maintain the report, at an estimated annual cost of \$950 to \$1,065. Although this does not result in tangible savings, these hours will be available for other duties.

Amendments proposed in House Bill 2810 also would abolish the requirement that each state agency annually report to the Director of Accounts and Reports any interest penalties paid or incurred under the Kansas Prompt Payment Act. Since the creation of the Prompt Payment Act in 1984, no request has been made to the Director of Accounts and Reports to view this data. Even if significant interest penalties are incurred, no statutory authority exists within the Prompt Payment Act to allow the Division to take action against an agency, and the agency incurs no further penalty or reprimand. Thus, the reporting requirement serves no purpose. Most state agencies, as a matter of sound business practice, avoid late payments that invoke interest penalties. The average statewide total of penalties paid under the Act during the last five fiscal years is \$2,158 annually. Maintaining a separate reporting process as required is an inefficient use of state resources and represents an outdated procedure. Actual procedures no longer require submission of agency reports. The information is instead obtained by the Division of Accounts and Reports for all state agencies through use of the central accounting system. If this information is ever desired, it can be easily obtained at any time upon request.

Thank you for the opportunity to provide testimony to the Committee and for your consideration of House Bill 2810. I would be happy to address any questions the Committee may have.

*Senate Ways and Means
3-22-02
Attachment 13*

Senate Subcommittee on KPERS Issues

March 15, 2002

The Subcommittee on KPERS Issues reviewed five bills: SB 484, SB 530, HB 2619, HB 2621, and HB 2626. A description and background for each bill is included in the concluding section of this report. The next section reflects the Subcommittee's recommendations on these bills.

SUBCOMMITTEE RECOMMENDATIONS

The Subcommittee makes the following recommendations regarding these bills:

1. **SB 484** be recommended favorable for passage. This bill would provide first-day coverage for Regents unclassified employees under a service-connected accidental death benefit provision during their year of waiting to become members of the Regents retirement plan. All other state employees have first-day coverage and Regents unclassified as well as other state employees have accidental death benefit coverage after their year of waiting. There is no fiscal note since the mortality rate for this group of less than 1,600 employees is presumed to be low. Another provision gives coverage to two employees at the School for the Blind who are long-term state workers but not members of KPERS and therefor without this benefit.
2. **SB 530** be amended and recommended favorably for passage. This bill addresses the nurse shortage at SRS institutions, especially Osawatomie State Hospital, by allowing licensed nurses to be exempt from a \$15,000 earnings limitation imposed on KPERS retirees who return to work for the state. The Subcommittee recommends that this bill be amended to include institutions under the Veterans Commission which also are experiencing a nurse shortage. In addition, the Subcommittee recommends a three-year sunset of this provision to allow a review of the fiscal impact on KPERS and of whether this program contributes to reducing the nurse shortage at these institutions. Any nurse who opts to participate in this post-retirement plan should be allowed to remain in the program after the sunset date which is intended to cut off new nurses from entering the program, not to force participating nurses out. This program is not an entirely satisfactory solution to a complex problem. One alternative would be bonuses, but given the financial condition of the state, that option may be limited.
3. **HB 2619** be amended and recommended favorably for passage. This bill would allow school districts, community colleges and the State of Kansas to make contributions into employees' supplemental retirement savings accounts and annuities. An Attorney General's letter opinion has indicated a need to permissive legislation giving school districts this authority. The Subcommittee recommends that language in the bill suggesting "an amount to match the employee's contribution.." be stricken in order to clarify that the authority is permissive (may contribute), that the boards would determine the amounts to be contributed, and that no dollar for dollar match is required

Senate Ways and Means
3-22-02
Attachment 14

or implied by the law. In addition, the Subcommittee recommends that certain terminology referring to state employees be clarified by substituting the term "participant" to denote those who voluntarily contributed to the state's 457(b) plan. The fiscal impact in the case of the State of Kansas would be delayed because of the financial condition of the State General Fund, and would be subjected to the appropriations process in the future if resources were requested. Local school boards and boards of trustees would have to determine if resources would be made available to implement this permissive legislation, and also would determine amounts to be contributed, if any.

4. **HB 2621** be passed. This bill has four items of a technical nature that include changes requested by the KPERS Board of Trustees and recommended by the Joint Committee on Pensions, Investments and Benefits to correct or clarify a number of different sections of KPERS law. There is no fiscal impact for these changes.
5. **HB 2626** be passed. This bill would allow KPERS members to buy eligible past service credit with money previously directed into employees' tax-deferred retirement accounts and annuities outside of KPERS. The bill would insure that transfers of such money would continue to be tax-exempt and allow KPERS to accept funds from 403(b) annuities and 457(b) plans for state, local and school employees who have contributed to such voluntary retirement annuities and savings plans.
6. **Senate Substitute Bill** be passed. The Subcommittee recommends that the previous three bills (HB 2619, HB 2621, and HB 2626) be combined into Senate Sub for HB 2621 and that this bill be recommended favorably for passage instead of three separate House bills.

Subcommittee Review of Bills and Background

SB 484 would provide KPERS accidental death benefit coverage for unclassified employees of the State Board of Regents who are in their one-year waiting period prior to entry into the Regents retirement plan, and for certain Kansas School for the Blind employees who would be covered after the first year in conjunction with a 1971 provision that did not make them KPERS members.

Background

SB 484 was recommended for introduction by the Legislative Educational Planning Committee. Under current law, most other state employees already have service connected accidental death benefit coverage in their year of waiting and subsequently after retirement contributions start with KPERS. Regents unclassified and the two School for the Blind employees participate in a non-KPERS retirement plan, and under current law, in the case of Regents unclassified personnel, have accidental death benefit coverage after contributing as a member to the Regents retirement program. According to the Board of Regents staff, no additional funding would be required to extend accidental death

coverage to the employees in their year of waiting. KPERS staff indicate a minimal actuarial impact since the mortality rate due to accidental death for Regents unclassified staff is presumed to be low and the number of additional covered personnel would be less than 1,600. The mortality rate for accidental deaths affects the actuarial calculations when actual experience is factored into the KPERS actuarial contribution rate. Benefits for accidental death are paid from the KPERS Retirement Fund, not from the Death and Long-Term Disability Benefits Fund. All state employees, including Regents unclassified, are covered by the death and disability program for non-service connected death and long-term disability.

SB 530 would allow KPERS retirees who are licensed nurses to return to work without any earnings limitation on their annual pay if employed at a state hospital under the Department of Social and Rehabilitation Services. The bill would be effective upon publication in the *Kansas Register*.

Background

Under current law, retirees who return to work for any state institution or agency after they retired are limited to \$15,000 maximum earnings while drawing retirement benefits. The Department of Social and Rehabilitation Services reports that passage of SB 530 would increase expenditures for salaries and wages for retired nurses who otherwise might not be working for the state. At the same time, hiring retirees would allow the hospitals to fill vacant positions and reduce the amount of overtime paid to ensure that there are enough nurses on duty every day. Hiring retired nurses also could reduce expenditures for recruiting and training new employees. The Department states that any net increase in expenditures would be absorbed within existing resources.

KPERS staff states that the actuarial impact of SB 530 is dependent upon the number of retirees who reenter the workforce, and there could be an actuarial impact on the liability of the System. When KPERS members retire, they generally are replaced with younger employees who will contribute to the System for many years. If retirees are allowed to return to work for the state with no limitations, then there are no additional employee or employer contributions to KPERS for that employee. In addition, if SB 530 encourages people who are retirement eligible to retire earlier than indicated in the actuarial estimates, then a fiscal impact could increase the liability of the Retirement System. The Division of Personnel Services estimates that 64 nurses at KPERS participating employers as of December 2001 were eligible for retirement out of 387 positions filled by licensed nurses. A total of 51 nurses at state institutions were retirement eligible in December 2001. The cumulative projection of retirement eligible nurses working for KPERS participating employers is estimated at 64 immediately, 76 in 2002, and 88 in 2003. The net increase in 2002 of retirement eligible nurses is 12 and the net increase in 2003 is 12, yielding a potential pool of 88 nurses who might retire during the three-year program period.

HB 2619, as amended, would permit school district boards of education, community college boards of trustees, and the State of Kansas to make employer contributions to tax deferred savings plans authorized by federal law. The bill would allow boards for

community colleges and public school districts to contribute to an employee's individual account or annuity under section 403(b) or deferred compensation plan under 457(b) of the Internal Revenue Code. In addition, the bill would allow the state to establish a new section 401(a) plan under the Internal Revenue Code to make employer contributions on behalf of employees who make contributions into a section 457(b) deferred compensation plan. The state's contributions would be subject to appropriations in determining an amount to be paid.

Background

The Joint Committee on Pensions, Investments and Benefits recommended introduction of HB 2619. The bill as introduced would have permitted community college and public school boards to make employer contributions to an employee's tax sheltered 403(b) plan.

An Attorney General's Letter Opinion was reviewed by the Joint Committee during the 2001 Interim. The letter was in response to a State Department of Education request about matching annuity contributions for school employees to be paid by a school district. The Attorney General's letter indicated that "statutes fail to provide any reasonable implication that a board of education may match contributions made into a tax sheltered annuity by an employee through a reduction in compensation paid by the school district. A board of education, there for, may not use its funds to match contributions paid into an employee's tax sheltered annuity."

Testimony in support of HB 2619 came from representatives of Unified School District 233 (Olathe), the Kansas National Education Association, and the Kansas Association of School Boards. The Director of Personnel Services, Department of Administration, asked for an amendment to include a new plan for state employees in provisions of the bill that would allow the state to make contributions in conjunction with an employee's participation in a 457(b) plan. The Director stressed that the provision would be subject to appropriations, and that by adding the new authority for the State of Kansas to make contributions, then at some future date the plan might be implemented as financial resources become available. According to the fiscal note for this bill, there would be no fiscal effect on the state. School districts or community colleges that choose to participate would be responsible for the costs.

HB 2621 would amend current KPERs law to provide the following:

1. Service Credit Purchase. This provision would clarify that anyone previously employed full-time as a Regents unclassified employee would be eligible to purchase KPERs service credit for the period of time when waiting to become a member of the Regents retirement plan, even if the individual never gained membership. In 2001, legislation was passed that allows former employees of Regents institutions to purchase service credit for the waiting period, even if they never attained membership in the Regents retirement plan.

2. Multi-Employer Employment. A clarifying amendment would allow local employers in a region of the state to share an employee to perform a particular function (e.g., county appraiser) and for that employee to participate in KPERS, if working the minimum number of hours when number of hours working for all public employers were taken into account. This would allow an employee who does not work the minimum requirement of 1,000 hours for KPERS coverage with any single employer to meet the minimum requirement when employment with all employers is combined.
3. Hire Date Before July 1, 1993. This provision would protect employees who were in their year of waiting for KPERS coverage when 1993 legislation passed that allows an employee hired prior to the effective date but who became a member afterwards to be entitled to either a four or three-year option for calculating retirement benefits. Members hired before July 1, 1993 have the option of choosing the higher benefit based on either a four-year final average salary with add-ons payments or a three-year final average without any add-ons.
4. Partial Lump Sum Options. Another provision would clarify that the actuarial calculation of benefits for members of the Brazelton group assumes that members started receiving payments under Social Security at either the age for which they are eligible for unreduced Social Security benefits or their actual retirement age, whichever is later. The Brazelton group is a closed group of police and firemen who have their retirement benefits offset for any Social Security they receive. Their lump-sum option would be based on their monthly benefit after this offset.

Background

HB 2621 was recommended by the Joint Committee on Pensions, Investments and Benefits concluding its 2001 Interim study. The bill was requested by the KPERS Board of Trustees. The Executive Director of KPERS appeared in support of the bill. There is no fiscal impact reported by KPERS for this legislation.

HB 2626 would allow for trustee-to-trustee transfers for qualified service credit purchases using money invested in one retirement plan to buy service credit in a different plan. Specifically, the bill would allow trustee-to-trustee transfers in order to avoid tax consequences for persons with 403(b) retirement annuity accounts or 457 retirement savings accounts who are eligible and wish to buy KPERS service credit.

Background

The KPERS Executive Director indicated that state legislation is required to address recent changes in federal law. The Economic Growth and Tax Relief Reconciliation Act (EGTRRA) of 2001 was cited as an attempt to address deficiencies in the qualified retirement plan market.

Changes included in the federal law that were identified were increased contribution limits; increased portability among plans; enhanced service credit purchase alternatives; tax credits; and enhanced contributions to IRAs. KPERS requested the Chairperson of the Joint Committee on Pensions, Investments and Benefits to prefile this bill since the Joint Committee had completed its 2001 Interim work and subsequently KPERS learned that state legislation would be required. The Joint Committee had been apprised that state legislation might be needed, but none had been drafted prior to that panel's last interim meeting.

There is no fiscal impact on administrative costs reported by KPERS for this legislation. A slight increase in workload is anticipated, and the 2001 Legislature authorized 4.0 additional positions to work in KPERS customer service which would handle this work.

Licensed Nurses Eligible for Retirement***

Statewide* Retirement Eligibles		2001	2002	2003	2004	2005	Total Employees In Job Class
7111F2	Licensed Practical Nurse	4	0	0	2	1	39
	Cumulative Total***	4	4	4	6	7	
7109F2	Licensed Practical Nurse Sr	8	1	2	3	3	59
	Cumulative Total***	8	9	11	14	17	
8323F2	Public Health Nurse I	0	0	0	1	0	8
	Cumulative Total***	0	0	0	1	1	
8324F2	Public Health Nurse II	0	0	0	1	0	3
	Cumulative Total***	0	0	0	1	1	
8288F2	Public Health Nurse III	1	0	0	0	0	10
	Cumulative Total***	1	1	1	1	1	
7112F2	Registered Nurse I	0	0	0	0	0	0
	Cumulative Total***	0	0	0	0	0	
7113F2	Registered Nurse II	1	0	0	0	0	30
	Cumulative Total***	1	1	1	1	1	
7114F2	Registered Nurse III	36	9	6	9	13	188
	Cumulative Total***	36	45	51	60	73	
7115F2	Registered Nurse IV	12	2	3	3	1	44
	Cumulative Total***	12	14	17	20	21	
7116F2	Registered Nurse V	2	1	1	0	0	6
	Cumulative Total***	2	2	3	3	3	
TOTAL		64	76	88	107	125	387
* Statewide numbers include SRS, Rainbow Mental Health Facility, Parsons State Hospital and Training Center, Osawatomie State Hospital, KNI, Learned State Hospital, KDHE, Veterans' Affairs Commission, Beloit Juvenile Correction Facility, School for the Blind, and School for the Deaf.							



Kansas Public Employees Retirement System

March 20, 2002

Senator Dave Kerr
President
Kansas Senate
300 SW 10th Room 359E
Topeka KS 66612-1504

Re: Suggested IRS Compliance Amendment to SB 530

Dear Senator Kerr:

At the Ways and Means Subcommittee meeting on KPERS Issues on March 15th we briefly discussed the need to have the law firm of Ice Miller, our outside qualified-plan and IRS compliance consultants, review SB 530 for certain Internal Revenue Code issues involved in returning to work after retirement for the same employer. As you know, the current post-retirement earning limitations in K.S.A. 74-4914(5) are related solely to working after retirement for the same employer or one who employed the retirant within two years prior to retirement. Ice Miller attorneys advise us that SB 530 may be enacted without any difficulty under the Internal Revenue Code's various restrictions, with only slight changes. These changes would be similar to the amendments I suggested to you in a March 19th letter regarding SB 638.

Specifically, Ice Miller advises that the amendment should be limited to nurses who either:

- are retiring under normal retirement (an unreduced benefit), or
- have already retired under early retirement (reduced benefit) prior to the date of enactment of this bill.

The reasons for expressing the above limitations in the bill are as follows. Generally speaking, the IRS views a return to employment with the same employer, especially if overtly pre-arranged between employer and employee before retirement, as a potential violation of the general rule precluding in-service distributions. (This rule flows from the concept that a qualified retirement plan exists for the payment of benefits upon retirement, which leads to analyzing whether the initiation of benefit payments is connected to a "bona fide retirement.") Based on a goal of having the KPERS retirement plan, as amended by this change, continue to require compliance with the IRS rule against in-service distributions, the particular rationale for the attached suggested re-wording of SB 530's amendatory language is as follows:

Senator Dave Kerr
March 20, 2002
Page 2

(1) According to certain precedential IRS rulings, employing those who retire under normal retirement eligibility (non-reduced benefits) and return to work by pre-arrangement with the same employer is not viewed as a violation of the general rule against in-service distributions. The IRS precedent specifically limits this view of post-retirement employment circumstances to persons who, under the terms of the plan, were qualified for normal, non-reduced retirement. In the KPERS plan, such persons are those who retire under subsection (1) of K.S.A. 74-4914.


(2) Employing nurses who retired on early retirement (whose circumstances are not included in the above mentioned IRS precedent), and who return to work with the same employer to take advantage of this bill, will not be seen as violating the general rule against in-service distributions if their retirement occurred 30 days or more prior to the enactment of this bill. In the KPERS plan, early retirement is provided under subsection (4) of K.S.A. 74-4914.

Thus, based on these considerations, KPERS' suggested language beginning on page 2, line 21 of SB 530 would read as follows:

. . . The provisions of this subsection shall not apply to retirants employed as substitute teachers or officers, employees or appointees of the legislature. *The provisions of this subsection shall not apply to retirants who are licensed nurses employed by an institution under the jurisdiction and control of the secretary of social and rehabilitation services, provided that such retirants either retired under the provision of subsection (1) of this section, or, if they retired under the provisions of subsection (4) of this section, were retired more than 30 days prior to the effective date of this act.*

If you have any questions, please contact me.

Sincerely,



Glenn Deck
Executive Director

cc: Senator Christine Downey
Julian Efrid, Legislative Research
Norman Furse, Revisor of Statutes
Mike Corrigan, Assistant Revisor of Statutes