Approved: July 17, 2003
Date

MINUTES OF THE HOUSE COMMITTEE ON APPROPRIATIONS.

The meeting was called to order by Chairman Melvin Neufeld at 1:00 p.m. on May 1, 2003, in Room 514-S of the Capitol.

All members were present except: Representative Jo Ann Pottorff, excused
Representative Steve Huebert, excused

Committee staff present: Amy Deckard, Legislative Research Department
Becky Krahl, Legislative Research Department
Audrey Nogle, Legislative Research Department
Debra Hollon, Legislative Research Department
Jim Wilson, Revisor of Statutes
Mike Corrigan, Revisor of Statutes
Nikki Feuerborn, Administrative Analyst
Shirley Jepson, Committee Secretary

Conferees appearing before the committee: Phyllis Kelly, Kansas Adult Care Executive Assoc.
Dennis Priest, Program Administrator Economic & Employment Support, SRS
Brian Vacquez, State Recovery Agent, SRS
John Peterson, Land Title Association
Molly W. Wood, Kansas Bar Association
John Grace, Kansas Homes and Services for the Aging
Tom Bell, Kansas Hospital Association

Others attending: See Attached

- Attachment 1 Fiscal Note on **HB 2467**
- Attachment 2 Fiscal Note on **SB 161**
- Attachment 3 Testimony on **HB 2467** by Phyllis Kelly, Kansas Adult Care Association
- Attachment 4 Testimony on **SB 272** by Dennis Priest, Program Administrator, Social and Rehabilitation Services
- Attachment 5 Testimony on **SB 272** by John Peterson, Land Title Association
- Attachment 6 Testimony on **SB 272** by Senator Stan Clark
- Attachment 7 Testimony on **SB 272** Molly M. Wood, Attorney on behalf of Kansas Bar Association
- Attachment 8 Fiscal Note on **HB 2470**
- Attachment 9 Testimony on **HB 2470** by Jim Klausman, Midwest Health Services
- Attachment 10 Testimony on **HB 2470** by John Grace, Kansas Homes and Services for the Aging
- Attachment 11 Testimony on **HB 2470** by Tom Bell, Kansas Hospital Association
- Attachment 12 Testimony on **HB 2470** by Margaret Farley, Kansas Advocates for Better Care
- Attachment 13 Testimony on **HB 2470** by Linda Lubensky, Executive Director of Kansas Care Home Association
- Attachment 14 Testimony on **HB 2470** by Jennifer Haller, Public Policy Coordinator, Heart of America Alzheimer's Association
- Attachment 15 Testimony on **HB 2470** by Howard Bartrug, resident at Brewster Place

Hearing on HB 2467 - Adult home care licensing and other functions transferred from Department onfHealth and Environment to Department on Aging

Audrey Nogle, Legislative Research Department, explained that the bill is a set of technical adjustments to allow the transfer of the nursing facility regulation program from the Department of Health and Environment to the Department on Aging. The fiscal note for **HB 2467** is zero (Attachment 1).

Representative Landwehr, Chair of the Social Services Budget Committee, stated that the Budget Committee has an amendment to the bill which would make the director's position an unclassified position.

At the Chair's request, Debra Hollon, Legislative Research Department, explained that **SB 261** transfers the

responsibilities and duties of the Information Network of Kansas to Kansas, Inc. The Information Network of Kansas (INK) would then be abolished and those employees would become employees of Kansas, Inc. The Fiscal Note for **SB 261** was distributed (Attachment 2).

The Chair recognized Phyllis Kelly, Kansas Adult Care Executive Association, who presented testimony in support of **HB 2467** (Attachment 3). Ms. Kelly indicated that her agency had no objection to the amendment proposed by the Budget Committee. John Grace, Kansas Homes and Services for the Aging, did not have testimony; however, indicated his association supports the bill and the proposed amendment.

The hearing on **HB 2467** was closed.

Representative Landwehr made a motion to add the language of **HB 2467** into **SB 261.** The motion was seconded by Representative Bethell. The motion carried.

In response to the concern voiced by the Committee with regard to having free access to information, the Information Network of Kansas has provided a list of services that legislators can receive without charge. The Committee will continue to work with the agency to ensure legislators have this access as agencies move more information to the internet.

Representative Landwehr moved to add an amendment to SB 261 which states that the secretary of aging shall appoint an officer to administer the adult care home licensure act and such officer shall be in the unclassified service under the Kansas civil service act. The motion was seconded by Representative Bethell. The motion carried.

The Committee requested that each member be provided a copy of **SB 261** containing the amendment.

Representative Landwehr moved to pass SB 261 as amended favorably. The motion was seconded by Representative Bethell. The motion carried.

Hearing on SB 272 - Recovery of previously paid medical assistance.

Audrey Nogle, Legislative Research Department, explained that **SB 272** makes some changes to medical assistance eligibility requirements for applicants or recipients of Medicaid services. It also authorizes provisions for recovery of state moneys paid to Medicaid recipients. The fiscal note on **SB 272** anticipates revenues of $700,000 all funds and a reduction in expenditures in FY 2004 of $180,166 in the SGF and $450,400 in all funds.

The Chair recognized Dennis Priest, Program Administrator, Department of Social and Rehabilitation Services (SRS), who presented testimony in support of **SB 272** (Attachment 4). Mr. Priest stated that the provisions in **SB 272** are not mandated by the federal government. Responding to a question about the double advantage, Mr. Priest noted that some clients enter into a "life care contract" with a relative, while that client is in the nursing facility, for a service that is being provided by the nursing facility and paid for by Medicaid, giving the client a dual benefit. **SB 272** (page 5, line 33) would make some stipulations to this type of contract. In response to a question from the Committee concerning the recovery of property from a client receiving Medicaid funds and who had part ownership in a company or corporation, Brian Vacquez, State Recovery Section of SRS, stated, per the provisions of **SB 272**, the state would work to recover payment from that asset or estate for payments to that client from Medicaid.

The Chair of the Social Services Budget Committee noted that they have heard testimony on the transfer of assets and payment of Medicaid funds to a nursing facility for a number of years. Mr. Priest indicated the number of persons applying and receiving Medicaid for elderly care has increased and the agency expects this number to continue to increase as the elderly population grows. The Budget Committee agreed with his assessment of proposed growth.

John Peterson, Land Title Association, presented a copy of several amendments concerning the lien provisions and the filing of liens which his company proposed to the Committee (Attachment 5). Mr. Peterson stated that he had visited with SRS concerning the amendments and they are supportive, except for the last

amendment (E).

Written testimony from Senator Stan Clark was distributed to the Committee regarding **SB 272** (Attachment 6).

The Committee stated that they would like to hear testimony from SRS on these amendments before any action is taken on **SB 272.**

Molly W. Wood, Attorney on behalf of the Kansas Bar Association, provided testimony against passing **SB 272** at this time and stated there were a number of issues which needed to be addressed before the legislation is passed (Attachment 7).

The hearing on **SB 272** was closed.

Hearing on HB 2470: Adult care homes, quality assurance assessment imposed on certain nursing care and long-term care providers.

Audrey Nogle, Legislative Research Department, explained that **HB 2470** has two major components; (1) a quality assurance assessment on facilities for nursing and long-term care and (2) authorization of a group-funded insurance plan. The first component allows the Secretary of Aging to assess an appropriate sum of money based on the number of non-medicare patients, to be used to improve the quality of nursing care. The second component allows adult care facilities to participate in a group-funded insurance plan and pay claims from that pool. The fiscal note on **HB 2470** was distributed (Attachment 8).

The Chair recognized Jim Klausman, President, Midwest Health Services, who presented testimony in support of the passage of **HB 2470** (Attachment 9).

Representative Nancy Kirk spoke in support of **HB 2470.** Representative Kirk, who also serves as a nursing home administrator, stated that because the Medicaid reimbursement rate is low, this legislation would assist nursing homes that primarily house Medicaid recipients and also bring more federal dollars into the system. She urged the Committee to pass the legislation.

John Grace, Kansas Homes and Services for the Aging, presented testimony in opposition of **HB 2470** (Attachment 10). Mr. Grace stated that because the legislation was brought forth late in the session, his association felt the issue should have further study to analyze the effects on the elderly population and the State financially.

Tom Bell, Kansas Hospital Association, presented testimony in opposition to the proposed legislation (Attachment 11). Mr. Bell stated that his association is not necessarily in opposition to the idea but that the legislation has a number of unanswered questions and needs time for more review. In response to a question from the Committee, Mr. Bell indicated that the federal law prohibits the Legislature from making all of the providers "whole". He also noted that the legislation should have a provision for a waiver to exempt those facilities where it could cause a hardship.

Written testimony was distributed from Margaret Farley, Kansas Advocates for Better Care (Attachment 12), Linda Lubensky, Executive Director of Kansas Care Home Association (Attachment 13), Marcine Grimes, Regional Director, Heart of America Alzheimer's Association (Attachment 14) and Howard Bartrug, resident at Brewster Place Retirement Place (Attachment 15).

The hearing on **HB 2470** was closed.

The meeting was adjourned. The next meeting will be held on May 2, 2003.

Melvin Neufeld, Chair

APPROPRIATIONS COMMITTEE GUEST LIST

DATE: May 1, 2003

NAME	REPRESENTING
Molly Wood	Kansas Bar Assoc.
John Badger	SRS
Tanya Dorf	SRS
Trista Curzydlo	KS Bar Assoc.
Vicki-Lynn Hebert	Div. of Budget
Doug Farmer	KDOA
Christy Lane	KDOA
Candy Bartlett	KHCA
Vicki Whitaker	Ks Health Care Assn
Linda Berndt	KHCA
Jim Klausman	KHCA
Nancy Pierce	KHCA
Karen Watney	Dept A/DPS
Brian Daugherty	SRS
Dennis Priest	SRS
Gwendolyn Cargnel	American Cancer Society
Ron Seeber	Hein Law Firm
Phyllis Kelly	Kansas Adult Care Executives Assoc.
Kathy Damron	KHCA

APPROPRIATIONS COMMITTEE GUEST LIST

DATE: May 1, 2003

NAME	REPRESENTING
Stuart Little	KHCA
John Federico	Alterra
Cheryl Allard	Coventry Health Care
John Peterson	Ks Land Title Assn

KANSAS

DIVISION OF THE BUDGET
DUANE A. GOOSSEN, DIRECTOR

KATHLEEN SEBELIUS, GOVERNOR

April 28, 2003

The Honorable Doug Mays, Speaker
House Committee of the Whole
Statehouse, Room 380-W
Topeka, Kansas 66612

Dear Representative Mays:

SUBJECT: Fiscal Note for HB 2467 by House Committee on Appropriations

In accordance with KSA 75-3715a, the following fiscal note concerning HB 2467 is respectfully submitted to your committee.

HB 2467 would transfer administration of the Adult Care Home Licensure Act from the Secretary of Health and Environment to the Secretary of Aging, as reflected in the Governor's budget recommendations for FY 2004. The bill would also make technical changes to existing law that are necessary to allow the health occupational credentialing, criminal record checks, and the abuse and neglect cases for individuals not in an adult care home to remain with KDHE.

The net fiscal effect of the transfer of nursing facility regulation is zero and is included in *The FY 2004 Governor's Budget Report.* The Department on Aging's budget is increased by $6,169,677, including $1,468,630 from the State General Fund. The Department of Health and Environment's budget is decreased by the same amount. The Department on Aging's FTE positions are increased by 104.0 positions and the Department of Health and Environment's FTE positions are decreased by the same amount.

Sincerely,

Duane A. Goossen

Duane A. Goossen
Director of the Budget

cc: Doug Farmer, Dept. on Aging
David Dallam, KDHE

STATE CAPITOL BUILDING, ROOM 152-E, TOPEKA, KS 66612
Voice 785-296-2436 Fax 785-296-0231 http://da.state.

HOUSE APPROPRIATIONS
DATE 5-1-2003
ATTACHMENT 1

KANSAS

DIVISION OF THE BUDGET
DUANE A. GOOSSEN, DIRECTOR

KATHLEEN SEBELIUS, GOVERNOR

April 14, 2003

The Honorable Stephen Morris, Chairperson
Senate Committee on Ways and Means
Statehouse, Room 120-S
Topeka, Kansas 66612

Dear Senator Morris:

SUBJECT: Fiscal Note for SB 261 by Senate Committee on Ways and Means

In accordance with KSA 75-3715a, the following fiscal note concerning SB 261 is respectfully submitted to your committee.

SB 261 would transfer the current duties and responsibilities of the Information Network of Kansas, Inc. (INK) to Kansas, Inc. The bill also would increase private sector members of the Kansas, Inc. board from 17 members to 20 members. The three additional members would be representatives of the telecommunications industry, the Adjutant General, and the Director of Information Systems and Communications in the Department of Administration.

Kansas, Inc. indicates that SB 261 would increase its FY 2004 budget by $116,992. These costs would be paid from fees generated by the Information Network of Kansas, Inc. This includes $2,090 for capital outlay, $1,000 for office equipment, $21,000 for miscellaneous expenses, and $92,902 for 1.5 FTE positions, an Information Technology Manager and an Accounting Specialist. INK currently has one employee, an Executive Director, whose salary is already included in Kansas, Inc.'s budget. The transfer of INK to Kansas, Inc. would result in the current Executive Director position being abolished, since Kansas, Inc. has an Executive Director position and there would be no need for two identical positions. Savings would be realized from abolishing this position and could be used to cover a portion of the above expenses with an Information Technology Manager position.

The Division of Information Systems and Communications provides contractual services to Kansas, Inc. and INK. Some of these services are duplicative. If I

STATE CAPITOL BUILDING, ROOM 152-E, TOPEKA, KS 66612-1
Voice 785-296-2436 Fax 785-296-0231 http://da.state.ks

KACE
Kansas Adult Care Executives

3601 West 29th, Suite 202
Topeka, Kansas 66614
Phone: 785-273-4393
Fax: 785-273-8681
E-Mail: kaceassoc@mindspring.com
Website: www.k-a-c-e.org

Thursday, May 1, 2003

Testimony before the House Appropriations Committee on HB 2467- an Act concerning adult care home licensing and other functions transferred from Department on Health & Environment to Department on Aging.

Mr. Chairman, Members of the Committee:

I am Phyllis Kelly, Executive Director of the Kansas Adult Care Executives Association (KACE). Our Association represents approximately 300 adult care home executives in nursing homes and assisted living facilities throughout Kansas. I appear before you today in support of HB 2467.

The KACE Board of Directors and the KACE Legislative Committee have reviewed and discussed the proposed transfer of licensing and other functions to the Kansas Department on Aging. We have met with the Secretaries of both Agencies, and we are certain that the transfer will be conducted professionally and with little disruption of services to our long-term care facilities. Other states have combined the reimbursement, licensing, and technical assistance functions in one agency with very successful results and outcomes.

At a recently conducted Kansas Long-Term Care Policy Forum, fragmentation of the service delivery system was identified as one of the major problem areas in long-term care. Our Association supports this proposed transfer as a very positive move in coordinating long-term care services and increasing consistency of the survey process across the state.

We urge your support of HB 2467.

HOUSE APPROPRIATIONS

DATE 5-1-2003
ATTACHMENT 3

Kansas Department of

Social and Rehabilitation Services

Janet Schalansky, Secretary

House Appropriations Committee
May 1, 2003

SB 272 - Concerning repayment of medical assistance

Integrated Service Delivery
Dennis Priest, Program Administrator
785-296-4717

For additional information contact:
Office of Planning and Policy Coordination
Marianne Deagle, Director

Docking State Office Building
915 SW Harrison, 6th Floor North
Topeka, Kansas 66612-1570
phone: 785.296.3271
fax: 785.296.4685
www.srskansas.org

Kansas Department of Social and Rehabilitation Services
Janet Schalansky, Secretary

House Appropriations Committee
May 1, 2003

SB 272 - Concerning repayment of medical assistance

Mister Chairman and members of the Committee, thank you for the opportunity to appear on SB 272. My name is Dennis Priest, Program Administrator with the Department of Social and Rehabilitation Services. SB 272 makes a number of changes impacting Medicaid eligibility and the Department's estate recovery process. These changes originate from recommendations made by the President's Task Force on Medicaid Reform and are designed to help discourage asset sheltering with the intent to qualify for Medicaid coverage of long term care. We expect the full impact of these changes to both save state dollars as well as allow for increased recoveries of monies paid for coverage of medical costs that the State has shouldered. Although these changes are more restrictive in nature, in light of current budget realties, they are seen as critical to preserving the goal of the Medicaid program to serve those who are truly needy and to protect the State's right to recovery for its taxpayers. SB 272 was passed in the Senate with several additional amendments which the Department supports as indicated later in our testimony.

There are two provisions that will directly impact eligibility for Medicaid coverage, particularly long term care. These are incorporated in 39-709, sections (e)(3) and (4). The first, in section (e)(3), regards availability of trust assets. Current Kansas case law holds that a Medicaid consumer who is the beneficiary of a trust may qualify for Medicaid if the trustee has any discretion to withhold funds from the consumer. Discretionary trusts are a common estate planning technique, but SRS contends that to use a trust as a shelter from the ordinary Medicaid eligibility rules is an abuse of the trustee's discretion. If a consumer needs medical care, and there is a trust that can pay for that care, the trust and not the State, should be the primary person responsible to pay those costs. This provision would view these trusts as available assets to the extent that the trustee by using his or her full discretion could make any of the income or principal available to the Medicaid consumer.

The provision does not require a parent of an adult disabled child to disinherit the child. Instead, it specifically allows for a parent of an adult child to create a supplemental needs trust by making specific reference in the trust that the parent intends that the trust only supplement Medicaid.

The second change, in section (e)(4), regards placing of restrictions on use of what are

called "life care" contracts. Recently, SRS has seen an increase in Medicaid planning, where typically family members devise methods to deplete the resources of a person so as to gain eligibility for Medicaid without all the funds being spent down on nursing home bills.

One method used is to have the person enter into a "life care contract," where the relative would provide certain services, such as visiting the person in a nursing home. Such a contract might be written so that if the person dies, some part of the contract payment, even if it had not yet been earned by the person providing life care services, would be forfeited.

SRS believes that this practice is contrary to public policy. This practice allows a person to have a double advantage; he or she can pay a relative to perform functions that the relative might provide anyway, while the State pays for all the cost of the nursing home.

This amendment imposes criteria that have to be met in such contracts in order for them to be considered as unavailable resources. It affects only those contracts involving provision of services by a non-licensed individual and requires such things as a written contract, payment for services after they have been rendered, and revocability. There is also the added provision regarding contracts for services provided by licensed professionals that monies paid in advance of receipt of services be considered an available resource. The goal of these provisions is to discourage use of such contractual arrangements for purposes of sheltering assets to meet Medicaid eligibility guidelines.

The remaining provisions help to increase the effectiveness of the estate recovery program and these are contained in 39-709 (e)(2) and g(3) and (4). As background, the Estate Recovery Program was initially authorized by the Legislature in 1992 and has since become a federally mandated process. The program allows the agency to recover Medicaid expenses properly paid on behalf of a Medicaid recipient from his or her estate if the recipient was either 55 years of age or older or in a long term care arrangement. It provides a means of giving back a portion of the expenses paid which make up the greatest proportion of the Medicaid program. Most recoveries are from probate actions and family agreements. Per federal and state law, no recovery action is taken if there is a surviving spouse or a minor or disabled child. Recoveries in FY 2002 were approximately $5 million in Kansas and over $25 million since the program's inception. Approximately 40% of the recoveries are returned to Kansas.

In regards to the provisions of (e)(2), the state has begun seeing a practice of property being put into joint tenancy with a designated interest, specifically setting up 99%

interest for the Medicaid consumer and 1% for the other owner. This practice is now being used by several private attorneys who specialize in estate planning. Such action does not result in ineligibility for the consumer but would technically remove that property from being recovered as part of the estate. To discourage such practices, this provision would allow the agency to count the full value of that property for eligibility purposes if such an arrangement occurred.

The provisions of (g)(3) provide that the estate for purposes of medical assistance shall include all real and personal property and other assets in which the deceased Medicaid recipient had interest in, including assets that are conveyed to a survivor or heir. The purpose of this provision is to expand the assets that can be viewed as available for recovery purposes and thus help increase collections in instances where many of the deceased's assets are held in joint tenancy or would pass to other beneficiaries. Such a change is allowable under the federal estate recovery law and a number of states have adopted such provisions over the last few years. The Department strongly believes in the goal behind estate recovery and that assets that have been owned by the Medicaid consumer should be available for recovery of medical expenses paid on that person's behalf while on assistance.

The final provision in (g)(4) would implement medical assistance lien authority. The Department has noted that a number of states who have such lien authority have increased both the effectiveness of and the recoveries for their estate recovery programs. Also in light of increased use of joint tenancy property ownership and homestead actions on behalf of children of the medical assistance recipient as a way to avoid estate recovery, we feel it is critical to pursue such authority.

The proposal would impose a lien on the real property of a recipient of medical assistance for the purpose of recovering previously paid medical assistance. This lien would be imposed primarily on medical assistance clients who have been in long term care. This proposal, as amended in the Senate, would use a 6 month residency in a medical facility as a threshold for examination of cases. Federal law allows liens to be placed on real estate owned by medical assistance consumers who have entered long term care. Further, no lien can be imposed when any of the following persons reside in the consumer's residence: recipient's spouse, recipient's child under the age of 21, recipient's child who is blind or disabled or a sibling with an equitable interest and who resided in the house for 1 year before the recipient's admission to a medical facility. Once the state has determined the propriety for a lien, the state would provide notice to the consumer and opportunity for a fair hearing. At the fair hearing, the issue, as required by federal law, would be whether the recipient can reasonably be expected to return home from the medical institution. Once a lien is allowed, the state would make the recovery when the property is sold.

Lien authority currently exists in about 20 states including Missouri, Oklahoma, Iowa and Colorado. In a survey of states with estate recovery programs conducted in 1997, the State of North Carolina found that lien authority was more common among the top 10 collection states than in the bottom 10 states. Of those 10 states, Minnesota, Oregon, Wisconsin, Iowa and North Dakota use both liens and probate recovery methods. Within our area, Missouri, Iowa and Colorado, also, use both methods.

As noted earlier, several amendments were made by the Senate Committee of the Whole regarding the lien provisions. SRS supports these changes. Amendments include clarification that the filing and enforcement of a medical assistance lien is subject to all prior liens of record and that the lien shall remain in effect unless it is terminated by foreclosure of any prior liens of record. In addition, as previously noted, a 6 month rather than 12 month period of residency in a nursing home shall be used as a threshold for examining a case for the filing of a lien.

The amended bill also contains a new Section 2 which requires the Department to provide an annual report to the Legislature regarding long term care expenditures, monies recovered through the new lien provisions, and recommendations for future legislation necessary to help further deter Medicaid estate planning in Kansas. The Department concurs with the need for this ongoing dialogue.

In summary, the Department believes the changes made as a result of this bill will improve the integrity of the Medicaid program in Kansas by helping to prevent abuse of the system caused by Medicaid estate planning and increase the effectiveness of the estate recovery process. We ask for your support of these measures.

[As Amended by Senate Committee of the Whole]

As Amended by Senate Committee

Session of 2003

SENATE BILL No. 272

By Committee on Way and Means

3-25

AN ACT concerning medical assistance; concerning the repayment thereof; creating and imposing a lien on real property of certain recipients of medical assistance; making certain transfers of property voidable; amending K.S.A. 39-709 and repealing the existing section.

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

Section 1. K.S.A. 39-709 is hereby amended to read as follows: 39-709. (a) *General eligibility requirements for assistance for which federal moneys are expended.* Subject to the additional requirements below, assistance in accordance with plans under which federal moneys are expended may be granted to any needy person who:

(1) Has insufficient income or resources to provide a reasonable subsistence compatible with decency and health. Where a husband and wife are living together, the combined income or resources of both shall be considered in determining the eligibility of either or both for such assistance unless otherwise prohibited by law. The secretary, in determining need of any applicant for or recipient of assistance shall not take into account the financial responsibility of any individual for any applicant or recipient of assistance unless such applicant or recipient is such individual's spouse or such individual's minor child or minor stepchild if the stepchild is living with such individual. The secretary in determining need of an individual may provide such income and resource exemptions as may be permitted by federal law. For purposes of eligibility for aid for families with dependent children, for food stamp assistance and for any other assistance provided through the department of social and rehabilitation services under which federal moneys are expended, the secretary of social and rehabilitation services shall consider one motor vehicle owned by the applicant for assistance, regardless of the value of such vehicle, as exempt personal property and shall consider any equity in any additional motor vehicle owned by the applicant for assistance to be a nonexempt resource of the applicant for assistance.

(2) Is a citizen of the United States or is an alien lawfully admitted

HOUSE APPROPRIATIONS COMMITTEE
May 1, 2003

RECOMMENDATION OF
KANSAS LAND TITLE ASSOCIATION

HOUSE APPROPRIATIONS

DATE 5-1-2003

ATTACHMENT 5

cretary from claims under this subsection (g) shall be deposited in the social welfare fund. The secretary may adopt rules and regulations for the implementation and administration of the medical assistance recovery program under this subsection (g).

(3) By applying for or receiving medical assistance under the provisions of article 7 of chapter 39 of the Kansas Statutes Annotated, such individual or such individual's agent, fiduciary, guardian conservator, representative payee or other person acting on behalf of the individual consents to the following definitions of estate and the results therefrom:

(A) If an individual receives any medical assistance before July 1, 2003, pursuant to article 7 of chapter 39 of the Kansas Statutes Annotated, which forms the basis for a claim under subsection (g)(2), such claim is limited to the individual's probatable estate as defined by applicable law; and

(B) if an individual receives any medical assistance on or after July 1, 2003, pursuant to article 7 of chapter 39 of the Kansas Statutes Annotated, which forms the basis for a claim under subsection (g)(2), such claim shall apply to the individual's medical assistance estate. The medical assistance estate is defined as including all real and personal property and other assets in which the deceased individual had any legal title or interest at the time of death including assets conveyed to a survivor, heir or assign of the deceased individual through joint tenancy, tenancy in common, survivorship, transfer-on-death deed, payable-on-death contract, life estate, trust, annuities or similar arrangement.

*(4) The secretary of social and rehabilitation services or the secretary's designee is authorized to file and enforce a lien against the real property of a recipient of medical assistance in certain situations[, **subject to all prior liens of record in the office of the register of deeds of the county where the real property is located**]. This lien is for payments of medical assistance made by the department of social and rehabilitation services to the recipient who is an inpatient in a nursing home or other medical institution. Such lien may be filed only after notice and an opportunity for a hearing has been given. Such lien may be enforced only upon competent medical testimony that the recipient cannot reasonably be expected to be discharged and returned home. A ~~one-year~~ **six-month** period of compensated inpatient care at a nursing home, nursing homes or other medical institution shall constitute a determination by the department of social and rehabilitation services that the recipient cannot reasonably be expected to be discharged and returned home. To return home means the recipient leaves the nursing or medical facility and resides in the home on which the lien has been placed for a period of at least 90 days without being readmitted as an inpatient to a nursing or medical facility. The amount of the lien shall be for the amount of assistance paid*

The lien must be filed

and must contain the legal description of all real property in said county subject to the lien

*b. ...epartment of social and rehabilitation services after the expiration of ~~one year~~ **six months** from the date the recipient became eligible for compensated inpatient care at a nursing home, nursing homes or other medical institution until the time of the filing of the lien and for any amount paid thereafter for such medical assistance to the recipient.*

(5) The lien filed by the secretary or the secretary's designee for medical assistance correctly received may be enforced before or after the death of the recipient. However, it may be enforced only:

(A) After the death of the surviving spouse of the recipient;

(B) when there is no child of the recipient, natural or adopted, who is 20 years of age or less residing in the home;

(C) when there is no adult child of the recipient, natural or adopted, who is blind or disabled residing in the home; or

(D) when no brother or sister of the recipient is lawfully residing in the home, who has resided there for at least one year immediately before the date of the recipient's admission to the nursing or medical facility, and has resided there on a continuous basis since that time.

(6) The lien remains on the property even after a transfer of the title by conveyance, sale, succession, inheritance or will unless one of the following events occur:

(A) The lien is satisfied. The recipient, the heirs, personal representative or assigns of the recipient may discharge such lien at any time by paying the amount of the lien to the secretary or the secretary's designee;

*[(B) **The lien is terminated by foreclosure of prior lien of record;**]*

~~(B)~~ [(C)] the value of the real property is consumed by the lien, at which time the secretary or the secretary's designee may force the sale for the real property to satisfy the lien; or

~~(C)~~ [(D)] after a lien is filed against the real property, it will be dissolved if the recipient leaves the nursing or medical facility and resides in the property to which the lien is attached for a period of more than 90 days without being readmitted as an inpatient to a nursing or medical facility, even though there may have been no reasonable expectation that this would occur. If the recipient is readmitted to a nursing or medical facility during this period, and does return home after being released, another 90 days must be completed before the lien can be dissolved.

(h) *Placement under code for care of children or juvenile offenders code; assignment of support rights and limited power of attorney.* In any case in which the secretary of social and rehabilitation services pays for the expenses of care and custody of a child pursuant to K.S.A. 38-1501 *et seq.* or 38-1601 *et seq.*, and amendments thereto, including the expenses of any foster care placement, an assignment of all past, present and future support rights of the child in custody possessed by either

by the filing of an action to foreclose said lien in the Kansas District Court or through an estate probate court action in the county where the real property of the recipient is located

(E) If the secretary of social and rehabilitation services or the secretary's designee has not filed an action to foreclose the lien in the Kansas District Court in the county where the real property is located within 10 years from the date of the filing of the lien, then the lien shall become dormant, and shall cease to operate as a lien on the real estate of the recipient. Such dormant lien may be revived in the same manner as a dormant judgment lien is revived under K.S.A. §60-2403 et. seq.

40TH DISTRICT

KANSAS SENATE

Stan Clark

COMMITTEE ASSIGNMENTS
CHAIR: UTILITIES
MEMBER: ASSESSMENT & TAXATION
ELECTIONS & LOCAL GOVERNMENT
ORGANIZATIONS, CALENDAR, & RULES
RULES & REGULATIONS

Testimony before the House Appropriations Committee
Senate Bill 272
May 1, 2003

Chairman Neufeld and members of the committee:

The Feb. 25, 2003 article in the Wall Street Journal (attachment 1) states very succinctly: Getting Poor On Purpose: States Crack Down on Families That Shed Assets to Get Free Nursing-Home Care. The article tells about the contortions families go through to spend, shelter or give away assets so that the State can pick up the tab.

Senate bill 272 addresses five immediate Legislative action items identified in the President's Task Force on Medicaid Reform executive summary (attachment 2). They are the first five listed on the executive summary page. These same specific initiatives have been identified by the Legislative Post Audit and several joint and interim committees of the legislature. These specific legislative initiatives tighten the eligibility requirements before a person becomes eligible for Medicaid assistance and to avenues to pursue to recover assets owned or controlled by the recipient of Medicaid upon their death.

Specifically, on page 5, lines 4 through 10 address the practice that some use where some specific fractional interest in property is jointly owned by the Medicaid applicant and some other party. If this happens, all of the property is considered an available resource to the applicant. There are currently instances where a one percent interest to property is given to someone and since the property is then jointly owned it is not a countable asset in determining eligibility for the Medicaid applicant.

Page 5, lines 11-24 addresses discretionary trusts which are created to be supplemental to any public assistance received.

Page 5, line 25 through line 3 on page 6 addresses contracts that are drawn that bear no relationship to the value of services provided or are prepaid. An example provided to Task Force was an agreement to pay your granddaughter $50,000 to visit you once a week for the rest of your life or $30,000 for your grandson to mow your lawn.

205 U.S. 83
OAKLEY, KANSAS 67748
785-672-4280
FAX 801-457-9064
E-Mail sclark@ink.org

HOUSE APPROPRIATIONS

DATE 5-1-2003
ATTACHMENT 6

Page 6, lines 4-11 is essentially the same scenario except it is for prepaid professional services.

Page 8, lines 15-24 expand the list of assets that a claim may be filed against the individual's estate. The primary targets are jointly owned property, annuities and trusts.

Page 8, line 25 through lines 36 on page 9 allows a lien to be placed on real property after the recipient had been in a nursing home for six months. Currently, Kansas law provides that SRS is to collect from the individual's estate the costs of the Medicaid services provided but with no lien on any property, many times the surviving spouse sells the asset and thereby out maneuvers the state's recovery efforts. This provision attaches the property and clouds the title. The lien amendments were at the suggestion of the representatives of Heartland Community Bankers and the Kansas Bankers Association and the change from "one year" to "six months" was action by the Senate Federal and State Affairs committee which I support.

The amendment on page 11 which provides for annual reporting was at the suggestion of Sen. Jim Barnett and I also support.

Mr. Chairman, Medicaid currently in terms of recipients and dollars, is larger than the Medicare program. Within 5 years, at current growth rates, Medicaid will be larger that the retirement benefits paid by Social Security. If State budgets would increase tax receipts by 5% annually and Medicaid costs would increase at their current rate, by 2020 Medicaid would consume the entire budgets of every state in the union. Doing nothing is not an option. Last year the Kansas Medicaid program (attachment 3) paid over $1.5 billion dollars for these services which was an increase of over $220 million from the previous year. It is estimated that 15 to 22 percent of long-term health care costs goes to families with adequate assets that can pay for their own nursing home care. If this estimate is accurate, the potential savings in the all funds budget will be from $50 million to $75 million annually and the State General Fund budget will be $20 million to $30 million.

I will gladly stand for questions.

Attachment 1 Stan Clark

THE WALL STREET JOURNAL.

TUESDAY, FEBRUARY 25, 2003 D1

Getting Poor On Purpose

States Crack Down on Families That Shed Assets To Get Free Nursing-Home Care; Doing It Legally

By Michelle Higgins

STATES AND COUNTIES have begun to crack down on people who purposely make themselves poor so the government will pay for their nursing-home care.

For years, thousands of middle-class and even affluent retirees—terrified that long-term health care costs could wipe out their savings—have transferred their assets to relatives in order to qualify for Medicaid, the government health plan for the poor. Their goal is to makes themselves poor by Medicaid's definition, generally meaning they have no more than $2,000 in assets, excluding their house and their car.

PictureQuest

Plus

How to impoverish yourself: People use a variety of asset transfers and other tactics.

See Page D2

The upshot is that families, in some cases with net worths of millions of dollars, are going through contortions to spend or give away all their money. Some simply write giant checks to their children, while others splurge on their house. Technically, a person can have a multimillion-dollar mansion and still be considered for Medicaid—though many states will try to recoop some of the money after he or she dies. New York has an even more bizarre option: A sick husband or wife can transfer all their assets to a spouse, who then refuses to pay for their care. Medicaid then steps in.

Such practices, while legal, are getting greater scrutiny as states—which pick up roughly half the costs of Medicaid—face their worst fiscal crisis in decades. Connecticut, where Medicaid accounts for 20% of state spending, has proposed a regulation that would make it harder for residents to shelter assets.

If Connecticut receives approval from the federal government, Kansas and other states say they are likely to propose similar regulations. Separately, Nassau County on New York's Long Island has quietly begun sending dunning letters to people who have refused to pay for their spouses' nursing homes.

There is a lot of money at stake. Medicaid paid $47 billion for nursing-home care in 2001, the most recent year available. Much of that goes to people truly in need. But much—according to one earlier study, as much as 22%—goes to families that could afford to pay for months or even years of their own nursing-home care.

An entire industry has sprung up to help well-heeled seniors qualify for Medicaid. "We make people poor," boasts Jennifer Cona, an elder law attorney in Jericho, N.Y., who says she helps several hundred clients a year transfer assets—sometimes as much as $2 million—to qualify for Medicaid. Attorneys use trusts and other estate-planning techniques on the larger transfers to avoid gift taxes.

Often, it is the children who are doing asset transfers on behalf of their sick parents. Dan Dugan, an electrical designer in Glen Head, N.Y., was paying about $5,000 a month for home care for his 78-year-old father-in-law from a joint checking account they held. He expected to run through the

Please Turn to Page D2, Column 4

6-3

Getting Poor on Purpose to Qualify for Medicaid

Continued From Page D1

$60,000 in the account in about a year as his father-in-law's dementia continued to worsen.

Then he learned how to make his father-in-law poor on paper. He transferred the money from the joint-checking account to one solely in his own name. Medicaid began picking up the tab in January, and Mr. Dugan and his wife got to keep most of the $60,000. "Being able to maybe have something left after this instead of a pile of bills definitely makes it easier for us," he says.

Nursing homes aren't required to take Medicaid patients, but many do. Indeed, even some of the top homes have numerous Medicaid clients.

Already, elder law attorneys, nursing home operators and some advocacy groups are lobbying to stop Connecticut from cracking down on asset transfers. The Connecticut AARP says the proposal would punish people who had never tried to cheat the system, including people who had given away money or property to help a family member through a financial crisis.

"If the Connecticut (plan) passes, this could be like a cancer across the county," says Bernard A. Krooks, president of the National Academy of Elder Law Attorneys. "It's a huge issue for seniors and families."

Exactly how many people shelter their assets in order to qualify for Medicaid isn't clear. The latest research was conducted in 1997 by the General Accounting Office which reviewed case files from two states and found that 13% to 22% of people who applied for nursing-home and other long-term care benefits through Medicaid transferred assets.

The insurance industry offers its own method for married couples to formally dispose of their assets, while still retaining an income. The tactic works best for couples in which only one spouse needs nursing care. The couple puts all their assets in an annuity, which generates a monthly check for the healthy spouse. The sick spouse is still considered impoverished and receives government-paid long-term care. (See accompanying chart for a summary of ways that families shelter their assets.)

But the main tactic people use is giving money to their heirs. States are allowed to limit this tactic under current Medicaid rules. If they find assets transferred during the three years before someone applies for Medicaid, they can force the applicant to wait for a period of time. The waiting period is determined by dividing the amount of money transferred by the average monthly cost of nursing-home care in the state.

For example, if a Medicaid applicant made gifts totaling $70,620 in Connecticut, where the average nursing home bill is $7,062 a month, he or she would be ineligible for Medicaid for 10 months.

But such a person could get around the restriction by transferring the assets at least 10 months before they need nursing-home care. Then Medicaid would pick up the tab from the first day. Connecticut wants to remove that loophole.

"It's an equity and fairness issue," says Claudette Beaulieu, spokeswoman for the Connecticut Department of Social Services. "People that are able to transfer resources are the ones that can pay for it themselves."

This isn't the first time states have tried to crack down on people who purposely make themselves poor. In 2000, a similar waiver request by Minnesota was denied by the Clinton administration because it was more restrictive than the limitations that Congress already had in place.

Just last week, Minnesota revived the proposal, and is hopeful it will be approved by the Centers for Medicare & Medicaid Services, the federal agency which must approve such waivers. "We're hoping CMS has come to understand that states are in a budget crisis," says Mary Kennedy, Minnesota's Medicaid director.

CMS officials say the agency can't comment yet. However, Bush Adminstration officials have said they want to give states more flexibility to reform Medicaid.

How to Impoverish Yourself

People with assets of more than about $2,000, not counting a house and car, generally don't qualify for Medicaid payments for nursing home care. Here are some of the ploys that people use to get around that.

- **Give away all your money.** Medicaid only looks at asset transfers during the previous three years. That means people can give away hundreds of thousands of dollars to their heirs and qualify for Medicaid just 36 months later. The drawback is that they can't get their money back if they end up not needing a nursing home. In addition, big transfers could be subject to stiff gift taxes.
- **Give away half of your money.** This common technique, dubbed "half a loaf," is used by people who need nursing-home care immediately. They give half their assets to their heirs. The other half of their nest egg pays for their care during the "penalty period" until they are eligible for Medicaid.
- **Put it in an annuity.** "Medicaid annuities," which make people appear poor, became popular several years ago. They work best for married couples, who use all their assets to buy an annuity. The sick spouse is considered impovrished and qualifies for Medicaid-paid care. The healthy spouse, meanwhile, receives a monthly check from the annuity company.
- **Refuse to pay for your spouse.** Under federal law, wives and husbands aren't required to pay nursing-home costs of their spouses. So people going into a nursing home sometimes transfer all their assets to their spouse so that they can still qualify for Medicaid. Many states don't permit "spousal refusal" when it comes to Medicaid, but New York does, and it's commonly used there.
- **Splurge on your house or your car.** Here the strategy is to spend on assets that generally aren't counted by Medicaid in determining eligibility. So people buy a new car. They pay down their home mortgage or they remodel their home.

6-4

Stan Clark
Attachment 2

The Task Force recommends the following items for immediate action:

Legislative Action Items

- Allow the state to establish a lien on the real property of Medicaid recipients.
- Change the definition of estate to include jointly-owned property.
- Prohibit property owners applying for Medicaid from specifying a percentage ownership of jointly-owned property.
- Require that discretionary trusts be considered a countable resource for public assistance.
- Limit the scope of life contracts established between Medicaid recipients and family members.
- Institute a refundable tax credit for long-term care insurance premiums.

Regulatory Action Items

- Extend the look-back period for transfers of non-trust property to five years and apply any resulting penalty period to begin with month of application.
- Adopt current federal minimum limits on the exempted value of non-business property and the value of vehicles.
- Replace the blanket exemption of all personal effects and furnishings with a $15,000 limit.
- Request a Cash and Counseling Section 1115 Waiver from the federal government.
- Install requested edits on the new Medicaid Management Information System:
  - Undertake a study of care management for multiple diagnosis and dual eligible recipients; and
  - Additional actions on completion of the edits should be pursued.
- Undertake a study of prescription drug use in Kansas nursing homes.

Attachment 3 - Stan Clark

6-9

State of Kansas

PROGRAM SERVICES	Customers		Annual Expenditures	
	FY 2001	FY 2002	FY 2001	FY 2002
CASH ASSISTANCE				
(Fiscal Year Average Per Month)				
Temporary Assistance for Families	31,792	34,461	$44,731,166	$48,201,402
Number of Children in Program	22,628	24,259	N/A	N/A
General Assistance	2,616	3,160	$5,013,944	$5,929,205
Refugee Assistance	15	10	$21,155	$16,622
MEDICAL ASSISTANCE (See Note 1)				
(Fiscal Year Unduplicated)				
Medical Assistance Beneficiaries	288,015	301,377	$1,279,536,328	$1,500,654,119
HealthWave Beneficiaries	32,540		$28,567,754	
Major Categories of Service (See Note 2)				
Adult Care Home	19,547	18,498	$327,124,936	$334,868,704
Home and Community Based Services				
Head Injury	129	171	$3,607,953	$3,974,400
Technology Assisted Children	48	42	$153,088	$149,637
Mental Retardation/Developmental Disability	6,247	6,386	$176,469,200	$190,003,000
Severe Emotional Disturbance	1,553	1,675	$8,844,967	$8,545,010
Physically Disabled	4,968	4,971	$57,526,375	$60,467,730
Inpatient Hospital	38,310	35,787	$147,728,205	$161,104,317
Outpatient Hospital	98,281	92,608	$20,518,465	$21,425,242
Pharmacy	164,489	156,838	$188,124,050	$213,054,599
Physician	167,854	161,723	$58,521,644	$60,582,279
OTHER ASSISTANCE (See Note 3)				
(Fiscal Year Average Per Month)				
Food Stamps	117,241	131,726	$89,007,787	$107,186,250
Child Care	15,312	16,158	$46,648,941	$50,827,245
Employment Preparation Services	8,692	11,346	$7,263,579	$7,781,360
(Fiscal Year Unduplicated)				
LIEAP Heating	80,201	72,239	$16,275,345	$8,786,702
Rehabilitation Services	11,717	12,451	$11,217,179	$13,507,337
Burial	879	846	$466,454	$458,390
Family Preservation	14,635	15,650	N/A	N/A
Children in SRS Custody	8,592	9,276	N/A	N/A
Child Support Enforcement		308,239	$105,793,339	$107,457,005
Number of Children in Program		173,500	N/A	N/A

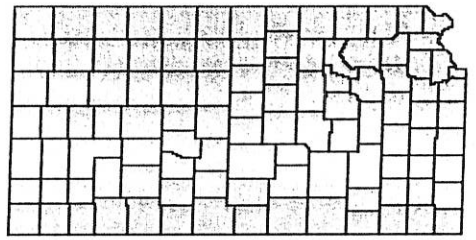
Statewide information includes adjustments and recoupments and may not be a summary of the county level information.

Note 1: Does not include HIPPS, Medicare Buy-In or adjustments.

Note 2: Medical consumers can be counted in more than one category of service. Major Categories of Service are not all inclusive.

Note 3: This is not an exhaustive listing of all programs available within SRS.

N/A: Not applicable.



KANSAS DEPARTMENT OF SOCIAL and REHABILITATION SERVICES

Central Office:

Office of the Secretary
915 SW Harrison, Room 603 N
Topeka, Kansas 66612
(785) 296-3271

2000 STATEWIDE DEMOGRAPHICS

Population	2,688,418
Under 20	798,418
20-64	1,533,681
65 Plus	356,229
Male	1,328,474
Female	1,359,944

Note: 2000 demographics are not certified as the official population.

AREA OFFICES

Chanute
Emporia
Garden City
Hays
Hutchinson
Kansas City
Lawrence
Manhattan
Overland Park
Topeka
Wichita

ABBREVIATIONS

HIPPS:	Health Insurance Premium Payment System
HCBS:	Home and Community Based Services
LIEAP	Low Income Energy Assistance Program

KANSAS BAR ASSOCIATION

1200 SW Harrison St.
P.O. Box 1037
Topeka, Kansas 66601-1037
Telephone (785) 234-5696
FAX (785) 234-3813
www.ksbar.org

TESTIMONY OF MOLLY M. WOOD ON BEHALF OF THE KANSAS BAR ASSOCIATION IN OPPOSITION TO SB 272

Kansas House Appropriations Committee
May 1, 2003

Good morning, I am Molly Wood and I am testifying on behalf of the Kansas Bar Association in opposition to Senate Bill 272. I am a member of the KBA Real Estate, Probate and Trust Section and practice in the area of Estate Planning. The KBA is a diverse organization with more than 6,000 members, including judges, prosecutors, plaintiffs' attorneys, defense attorneys and many others.

The substantive changes in SB 272 do the wrong thing for the right reason. It is appropriate and necessary to assure that scarce state resources are available for low-income, elderly, and disabled Kansans, but this legislation carries with it a host of unintended consequences.

For instance:

- The two-prong test found in Section (e)(3) for whether a discretionary trust is "available" as a resource to a Medicaid applicant is unnecessary.

    1. The first part of the test is already the law. Pursuant to *Myers v. SRS* (1994), the trust must be a restricted gift from someone who is not obligated to support the Medicaid applicant. In other words, the person creating the trust is voluntarily making a gift to a potentially Medicaid eligible person.

    2. The second part of the test—that the trust must contain "special needs" language just means that everyone creating a trust prospectively will get it right (or have a malpractice claim against his attorney) or will choose to disinherit family members, and that disabled folks with older trust instruments without this second technical requirement will be unfairly disadvantaged.

- Placing liens on the real property [Section (g)(4)] of the community spouses, disabled children, and elderly siblings of Medicaid recipients will cause divorce, pre-mature institutionalization, and litigation, respectively. It doesn't matter that the lien can't be enforced before the spouse, etc. dies, because it prevents refinancing for repairs, reverse

HOUSE APPROPRIATIONS

DATE 5-1-2003
ATTACHMENT 7

- mortgage, and sale—the spouse, disabled child, or elderly sibling can't access the equity in the home to pay for his or her needs.

- Including joint-tenancy, life estates, tenancy-in-common, etc. in the "medical assistance estate" [Section (g)(3)(B)] will mean that *nobody in the state will have marketable title* for their property until at least 6 months after date of death, regardless of whether any prior owner ever received Medicaid. Title insurers won't assume the risk that there isn't a Medicaid claim lurking in the background, so everybody bears the penalty.

- Section (g)(6)(C) states that the lien "will be dissolved" upon the occurrence of certain events has no procedural mechanism, so individuals seeking dissolution must bring court action?

These are just a few examples of the fallout from Senate Bill 272. The Kansas Bar Association is willing to work with proponents of this legislation to reach a workable compromise on how to best implement changes that will protect all Kansans.

I will be happy to answer any questions you may have.

KANSAS

DIVISION OF THE BUDGET
DUANE A. GOOSSEN, DIRECTOR

KATHLEEN SEBELIUS, GOVERNOR

May 1, 2003

The Honorable Melvin Neufeld, Chairperson
House Committee on Appropriations
Statehouse, Room 517-S
Topeka, Kansas 66612

Dear Representative Neufeld:

Subject: Fiscal Note for HB 2470 by Committee on Appropriations

This is to notify you that the Division of the Budget is preparing a fiscal note for the bill indicated above. A request to provide fiscal effect information has been sent to one or more agencies or organizations, and we are awaiting a response from them to complete the fiscal note. This notice is to acknowledge that a hearing has been scheduled on the bill and to advise you of the status of the fiscal note in our continuing effort to provide useful and timely information on proposed legislation. As soon as the necessary information is received, the fiscal note will be completed and submitted to you for your deliberations.

If you have questions or more detailed information is desired, please contact us.

Sincerely,

Duane A. Goossen

Duane A. Goossen
Director of the Budget

STATE CAPITOL BUILDING, ROOM 152-E, TOPEKA, KS 6661
Voice 785-296-2436 Fax 785-296-0231 http://da.state

HOUSE APPROPRIATIONS
DATE 5-01-2003
ATTACHMENT 8

KHCA

Member of ahca

Kansas Health Care Association
221 SOUTHWEST 33rd STREET
TOPEKA, KANSAS 66611-2263
(785) 267-6003 • FAX (785) 267-0833
www.khca.org

Testimony before the House Appropriations Committee
HB 2470 – A Quality Assurance Assessment
May 1, 2003

Chairman Neufeld and Committee:

My name is Jim Klausman, Midwest Health Services, co-owner of 20 long term care facilities in Kansas. I am here today to testify in support of HB 2470 on behalf of the Kansas Health Care Association (KHCA), a trade association representing approximately 200 long term care facilities. KHCA member facilities are willing to accept a Quality Assurance Assessment (QAA) in order to bring in additional federal Medicaid matching dollars to help adequately fund care and services to Kansas elders.

A Quality Assurance Assessment is needed to close the gap between Medicaid reimbursement for services and the actual cost to provide these services. BDO Seidman, in an independent survey, calculated that in Kansas in 2001 the gap between the cost to provide services and reimbursement was $11.35 per Medicaid patient day and that gap continues to grow. KDOA, in its *Notice of Proposed Nursing Facility Medicaid Rates* states, "The proposed rates would [only] cover 91.40% of the estimated Medicaid health care costs incurred by participating nursing facilities statewide."

The assessment proposed by HB 2470 has been carefully written so that it benefits the greatest number of nursing facilities and is budget neutral for the rest. Great care has also been taken to ensure that the assessment is legal, allowable and meets all federal requirements.

Enormous benefits from passage of HB 2470 exist for many aspects of long term care. Nursing facility residents will benefit from quality care and increased staffing that result from adequate Medicaid funding, long term care providers will come closer to realizing their actual costs to provide services to poor elders, and the State will be able to bring in additional dollars for HCBS/FE services for those in need of this level of care.

Concern has been expressed as to whether those Kansans able to pay for their own care will be harmed by this assessment. We have suggested amendments to the legislative language to address this concern so that it works for both non-profit and for-profit facilities equally well. By applying a broad-based, uniform waiver as prescribed by the Centers for Medicare and Medicaid Services (CMS) [42 CFR 433.68(e)(2)(ii)], the assessment works for <u>all</u> providers. And more importantly, all residents, both private pay and Medicaid, will benefit from continued quality care.

HB 2470 confers enormous benefits. In terms of actual additional federal Medicaid matching funds, Kansas stands to bring in $31.2 million dollars. These are funds that the State otherwise will not be able to access to adequately fund the care of our elders in the coming year and beyond. With the current budget deficit it just makes sense to apply to CMS for these dollars.

You may hear that we should study this further. We believe HB 2470, with the proposed amendments, addresses all of the concerns that members of your committee and other providers have voiced. Kansas continues to be among the lowest in the nation for Medicaid reimbursement which directly impacts our poor elderly. To wait another year, even at one half of the allowable assessment rate, is to pass up $31.2 million in federal monies in SFY 2004 alone. This funding mechanism has been in place for at least a decade and currently 17 states implement it and more states are expected to this legislative year.

In conclusion, perceived barriers to successful use of a Quality Assurance Assessment have been carefully contemplated and solutions found. I ask the Appropriations Committee to examine the facts and figures and then pass this bill favorably. I would be happy to entertain questions on HB 2470.

KANSAS

PAMELA JOHNSON-BETTS, SECRETARY

DEPARTMENT ON AGING

KATHLEEN SEBELIUS, GOVERNOR

April 24, 2003

Linda Berndt, Executive Vice President
Kansas Health Care Association
221 SW 33rd Street
Topeka, Kansas 66611

RE: Notice of Proposed Nursing Facility Medicaid Rates for FY 2004 and Rate Setting Tables

Dear Ms. Berndt:

Enclosed is a copy of the "Notice of Proposed Nursing Facility (NF) Medicaid Rates for State Fiscal Year 2004, Methodology for Calculating Proposed Rates, and Rate Justifications; Notice of Intent to Amend the Medicaid State Plan; Request for Comments; and Notice of Intent to Publish Final Rates." The notice was published in the Kansas Register today. Please feel free to share your copy with your members and interested parties.

Also enclosed are the following proposed rate-setting tables: Inflation for Report Year-Ends Prior to 7/1/02; Inflation for Report Year-Ends After 7/1/02; Cost Center Limitations; Incentive Factors; Owner/Administrator Limitation Table; and Case Mix Index Table.

If you have questions concerning the public notice or the proposed rate setting tables, you can contact me at 785-296-8620.

Sincerely,

Dave Halferty

Dave Halferty, Senior Manager
Nursing Facility and CARE Programs
Program and Policy Commission

DH
Attachments

C: Secretary Pamela Johnson Betts
Rick Shults
Janis DeBoer
Bill McDaniel

NEW ENGLAND BUILDING, 503 S. KANSAS AVENUE, TOPEKA, KS 66603-3404
Voice 785-296-4986 Fax 785-296-0256
http://www.agingkansas.org/kdoa/

1. The proposed rates are calculated according to the rate-setting methodology in the Kansas Medicaid State Plan and pending amendments thereto.

2. The proposed rates are calculated according to a methodology which satisfies the requirements of K.S.A. 39-708c(x) and the Department of Social and Rehabilitation Services regulations in K.A.R. Article 30-10 implementing that statute and applicable federal law.

3. The State's analyses project that the proposed rates:
   a. Would result in payment, in the aggregate of 90.99% of the Medicaid day weighted average inflated allowable nursing facility costs statewide; and
   b. Would result in a maximum allowable rate for the statewide average CMI of 0.9186 of $121.56; with the total average allowable cost being $116.42.
   c.

Estimated average rate July 1, 2003	$102.61
Average payment rate July 1, 2002	$99.58
Amount of change	$3.03
Percent of change	3.04%

4. Estimated annual aggregate expenditures in the Medicaid nursing facility services payment program will increase by approximately $20 million.

5. The state estimates that the proposed rates will continue to make quality care and services available under the Medicaid State Plan at least to the extent that care and services are available to the general population in the geographic area. The state's analyses indicate:

   a. Service providers operating a total of 316 nursing facilities (representing 98% of all the licensed nursing facilities in Kansas) participate in the Medicaid program, while an additional 43 hospital-based long-term care units are also certified to participate in the Medicaid program;

   b. There is at least one Medicaid-certified nursing facility and/or nursing facility for mental health, or Medicaid-certified hospital-based long-term care unit in each of the 105 counties in Kansas;

   c. The statewide average occupancy rate for nursing facilities participating in Medicaid is 86.2%;

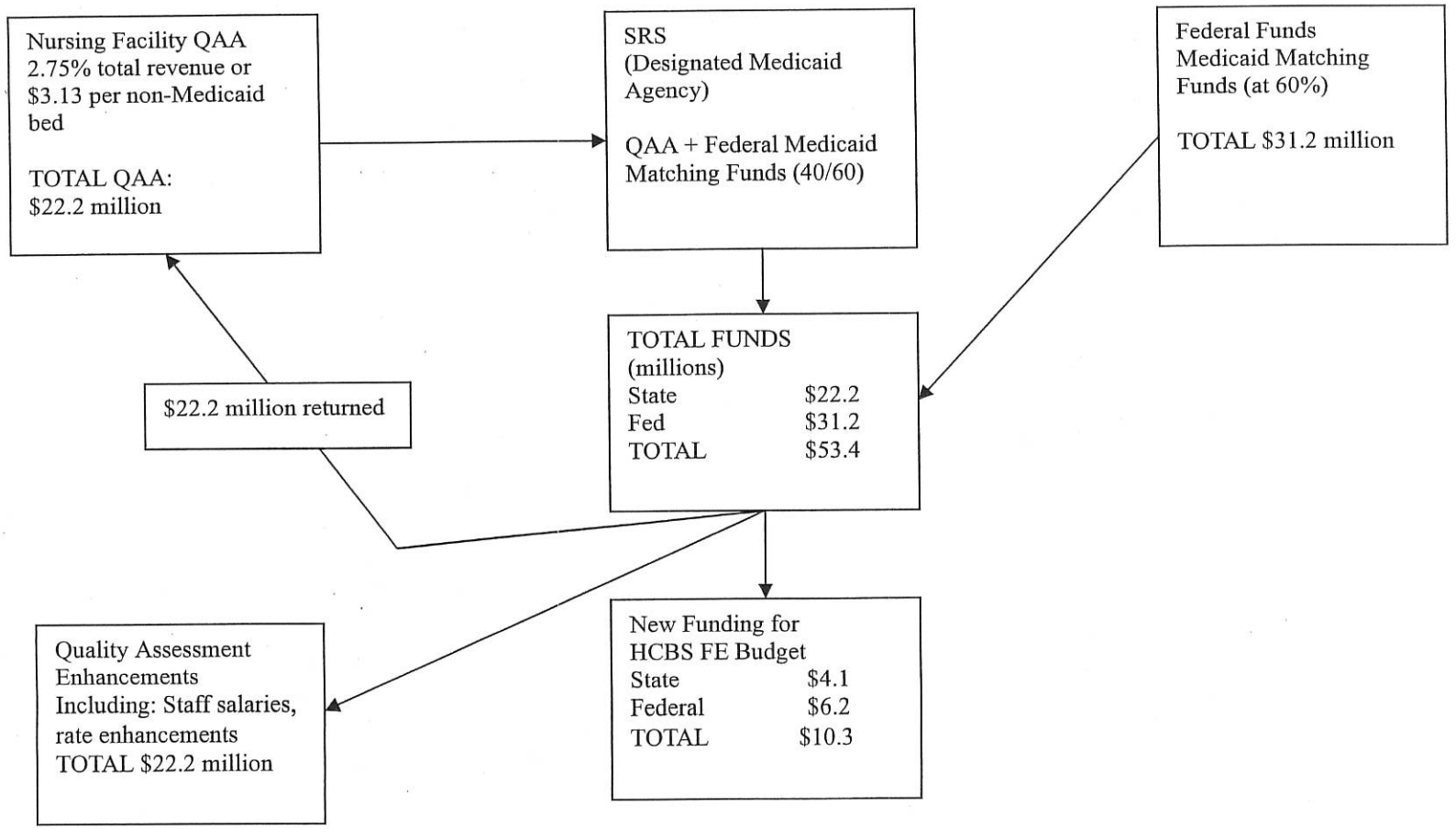
   d. The statewide average Medicaid occupancy rate for participating facilities is 55.4%; and

   e. The proposed rates would cover 91.40% of the estimated Medicaid health care costs incurred by participating nursing facilities statewide.

6. Federal Medicaid regulations at 42 C.F.R. 447.272 impose an aggregate upper

Quality Assurance Assessment

Nursing Facilities — State — Federal



9-6

	# PROV	inpat days	meddays	Total census less Medicare days	state $3.13 e*$3.13	fed portion	Enhancement received medday
All Facilities	376	7926465	4324376	7487723	$22,216,749	$31,288,760	
Averages		21081	11501	19914	$59,087	$83,215	$4.64
Min		3285	0	0	$0	$0	$0.00
Max		69343	43821	63934	$193,118	$317,064	$7.24
KHCA							
total	136	3155533	1873432	2972194	$8,991,585	$13,563,648	
Averages		23202	13775	21854	$66,115	$99,733	$5.24
Min		9283	1955	1955	$6,119	$14,154	$0.00
Max		69343	43821	63934	$173,674	$317,264	$7.24
KAHSA							
total	131	2819684	1366576	2742681	$7,868,732	$9,894,010	
Averages		21524	10432	20936	$60,067	$75,527	$4.31
Min		6908	1958	6908	$0	$14,176	$0.02
Max		63458	42290	61699	$193,118	$306,180	$7.24
Non-Non							
total	84	1666656	977040	1577966	$4,866,421	$7,073,770	
Averages		19841	11631	18785	$57,934	$84,212	$4.93
Min		5299	130	437	$0	$941	$0.96
Max		53871	28707	50570	$158,284	$207,839	$7.24

	# PROV	inpat days	meddays	Total census less Medicare days	state $3.13 e*$3.13	fed portion	Enhancement received medday
All Facilities	376	7926465	4324376	7487723	$22,216,749	$31,288,760	
Averages		21081	11501	19914	$59,087	$83,215	$4.64
Min		3285	0	0	$0	$0	$0.00
Max		69343	43821	63934	$193,118	$317,064	$7.24
Rate Enhanced							
total	360	7748865	4309851	7401257	$22,066,080	$31,203,321	
Averages		21525	11972	20559	$61,295	$86,676	$4.85
Min		5299	130	437	$0	$941	$0.02
Max		69343	43821	63934	$193,118	$317,264	$7.24
No Effect							
total	16	177600	14525	86466	$150,669	$105,161	
Averages		11100	908	5404	$9,417	$6,573	$0.00
Min		3285	0	0	$0	$0	$0.00
Max		53496	14525	48137	$150,669	$105,161	$0.00

Broad-Based and Uniformity Waiver: 42CFR 433.68(e)(2)

Under this approach, a zero tax rate is charged to low Medicaid census facilities (we used Medicaid census no higher than 20% of total non-Medicare census) and a tax rate of $1.00 ppd to high Medicaid census facilities and to those with a Medicaid census between 21% and 30%. The mathematical methodology for CMS approval is a statistical one, examining the relationship between each facility's annual Medicaid census and the percentage of the overall tax paid by each provider. Using linear regression (least squares), the slope of the line is computed for both the uniform tax ($2.967 per non-Medicare day) and the waiver program using a combination of lower taxes and no taxes for the high and low Medicaid providers, respectively and $3.13 ppd for all other providers. As long as the slope of the line based upon the waiver tax is no steeper than the slope based upon the uniform tax (which it was not), the waiver is automatically approved.

This approach is typically favored by providers. The number of high Medicaid providers that a lower tax is applied to is much less under a combination of broad-based and uniformity waiver program than solely under a broad-based waiver approach.

Session of 2003

HOUSE BILL No. 2470

By Committee on Appropriations

4-4

AN ACT concerning adult care homes; enacting a quality assurance assessment on facilities for skilled nursing and long term care units of hospitals; prescribing certain guidelines; powers, duties and functions; disposition of proceeds; authorizing a group-funded pool.

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

Section 1. (a) As used in sections 1 through 6, and amendments thereto, unless the context requires otherwise, the words and phrases have the meanings respectively ascribed thereto by K.S.A. 39-923, and amendments thereto.

(b) ''Skilled nursing care facility'' and ''nursing facility'' and ''longterm care units of hospitals'' have the meanings respectively ascribed thereto by K.S.A. 39-923, and amendments thereto.

Sec. 2. (a) The secretary of aging shall assess each skilled nursing facility and nursing facility licensed in Kansas an appropriate sum of money per non-medicare patient day, to finance initiatives designed to maintain or increase the quantity and quality of nursing care.

(b) In determining the amount of the assessment pursuant to this section, the secretary of aging shall establish a uniform rate per nonmedicare patient day that is equivalent to a percentage of the total annual accrual basis gross revenue for services provided to residents of all nursing facilities licensed in this state. This percentage shall be determined by the secretary of aging and subject to all appropriate and applicable federal laws. For the purposes of this section, total annual accrual basis gross revenue does not include charitable contributions received by a nursing facility.

(c) The secretary of aging shall calculate the assessment owed by each nursing facility by [multiplying the total number of days of care provided to non-medicare residents by the nursing facility, as provided to the secretary of aging pursuant to section 3, and amendments thereto, by the uniform rate established pursuant to this section.

(d) Any amount assessed pursuant to this section is due 30 days after the end of the month for which it has been assessed.

(e) The payment of the assessment to the secretary of aging pursuant to sections 1 through 6, and amendments thereto, is an allowable cost for

Comment: Change to include language that appropriate sum to be determined using the statistical test set forth in 42 CFR 433.68(e)(2)(ii), broadbased and uniformity waiver

Comment: Insert ' Private pay rates cannot increase as a result of the QAA.'

Comment: Remove word 'uniform' as waiver sets non-uniform rates

Comment: Change to reflect establishing the waiver for rates to meet the broadbased and uniform statistical test for rates

Comment: Change to 'rate' from 'percentage'

Comment: Insert waiver language

Comment: See comment above to remove word 'uniform'

medicaid reimbursement purposes.

Sec. 3. (a) Each nursing facility shall file with the department on aging each calendar quarter a report setting forth the total number of days of care such nursing facility provided to non-medicare residents during the preceding month.

(b) Each nursing facility shall file with the secretary of aging any information required and requested by the secretary to carry out the provisions of sections 1 through 6, and amendments thereto.

Sec. 4. (a) There is hereby created in the state treasury the quality assurance assessment fund which shall be administered by the secretary

pool in an amount determined by the trustees to protect the group-funded pool against the misappropriation or misuse of any moneys or securities. The administrator shall file evidence of the bond with the commissioner. The bond shall be one of the conditions required for approval of the establishment and continued operation of a group-funded pool. Any administrator so designated shall be a resident of Kansas if an individual or shall be authorized to do business in Kansas if a corporation.
(b) Retain control of all moneys collected or disbursed from the group-funded pool and segregate all moneys into a claims fund account and an administrative fund account. All administrative costs and other disbursements shall be made from the administrative fund account. The trustees may establish a revolving fund for use by the authorized service agent which is replenished from time to time from the claims fund account. The service agent and its employees shall be covered by a fidelity bond, with the group-funded pool as obligee, in an amount sufficient to protect all moneys placed in the revolving fund.
(c) Audit the accounts and records of the group-funded pool annually or at any time as required. The commissioner shall prescribe the type of audits and a uniform accounting system for use by group-funded pool and service agents to determine the ability of the group-funded pool to pay current and future claims.
(d) The trustees shall not extend credit to individual members for any purpose.
(e) The board of trustees shall not borrow any moneys from the group-funded pool or in the name of the group-funded pool without advising the commissioner of the nature and purpose of the loan.
(f) The board of trustees may delegate authority for specific functions to the administrator of the group-funded pool. The functions which the board may delegate include such matters as contracting with a service agent, determining the premium chargeable to and refunds payable to members, investing surplus moneys and approving applications for membership. The board of trustees shall specifically define all authority it delegates in the written minutes of the trustees' meetings. Any delegation of authority shall not be effective without a formal resolution passed by the trustees.
Sec. 19. Any person or agency soliciting for a proposed or authorized group-funded pool shall hold a current license authorizing such person to sell each line of insurance offered for sale. Any person licensed for the

kinds of insurance offered by the group-funded pool shall be deemed to be certified by a company for the kinds of insurance permitted by the group-funded pool.
Sec. 20. (a)This act shall take effect and be in force from and after its publication in the statute book. (b)However, the QAA imposed in this act is repealed on the effective date of the repeal or a restricted amendment of those provisions of the Medicaid Voluntary Contribution and Provider-Specific Tax Amendment of 1991 (Public Law 102-234) that permit Federal financial participation to match state funds generated by provider-specific fees or assessments. (c)The QAA may not be imposed and collected, and the Secretary of Aging may not adopt or enforce rules if it is determined that the imposition of the assessment will not entitle the state to receive

Comment: Add federal law change contingency that if provider assessment repealed or restricted this act is repealed

additional federal funds under the Medicaid program.
Sec. 21. To assure compliance with this act, regulation 30-10-18, Rates of Reimbursement, (7)(b)(1) shall be withdrawn.
Sec.21. No later than the effective date of this act, the Department On Aging shall submit for approval an amendment to the state plan To include the QAA, to the federal Centers for Medicare and Medicaid services so that the approval process is not delayed.

Comment: Add language to withdraw regulation regarding relationship of rates between types of residents

Comment: Order state waiver application process

KAHSA
KANSAS ASSOCIATION OF
HOMES AND SERVICES FOR THE AGING

Testimony

Members of the House Appropriations Committee
The Honorable Melvin Neufeld Chairman
May 1, 2003

Presented by John R. Grace, President

Good Morning Chairman Neufeld and Members of the Committee:

I'm John Grace, President of the Kansas Association of Homes and Services for the Aging. Our organization represents more than 160 not-for-profit retirement communities, nursing facilities and community based services for the elderly. Many have been in service for over 50 years and are proud of their record of service to the frail elderly of our state.

We are here in opposition to House Bill 2470.

We understand and appreciate the difficult financial position the state is in, and we want to be constructive in our search for solutions. We do not believe that this tax program scheme, which some legislators in Congress have referred to as a "virus that is wrong and morally corrupt" would be in the best interests of our government or the frail elderly citizens whom we serve.

The reasons we believe this is not good public policy are as follows:

- Funding for nursing facilities and other safety net services for those persons who are on Medicaid should be the responsibility of all taxpayers. If this new tax were instituted, the burden would fall on a small number of very old, frail people residing in nursing homes, who have labored, planned and saved in order to pay for their own care. Taxing them in this way serves as a disincentive for the very behavior the State should be encouraging. Over time, as the State devotes a smaller percentage of general fund money to nursing facilities, legislators may have less interest in nursing facilities and the frail elderly.

- Private pay residents, because of the increased tax, will be forced to spend down quicker, and could increase "Medicaid estate planning" thereby accessing Medicaid funds quicker. With estate planning, there will be fewer private pay residents, Medicaid funds are accessed quicker, and the costs to the state will increase.

- In the middle 1990's the Legislature created the Intergovernmental Transfer Program and generated over $350 million dollars in additional funds for state government. The vast majority of these funds were used to supplement the state general fund rather than enhancing nursing home care. The portion of those funds that were set aside for nursing facilities – within 2 years of fiscal challenges for the state – totally evaporated. We believe that similarly generated new funds could be used for ot

217 SE EIGHTH STREET
TOPEKA, KANSAS 66603-3906

facility improvements. The federal law does allow the state to use the money as they see fit.

- Because of the restrictions in federal law, if a resident tax were imposed, there is no assurance that many providers would not lose more in tax than they gain in reimbursement enhancements. The federal law is very specific and restrictive about any provision for "hold harmless" for the tax that is paid.

- The federal law allows for different categories of health care providers to include taxes on their clients. Nursing facility residents are being singled out to help pay for other health care services in our state government.

- The federal government is tightening up these programs and attempting to shut them down. Thirteen states that have implemented these taxes are under investigation by the federal government because they appear to be in noncompliance with federal law.

KAHSA believes that a tax on the grandmothers and grandfathers of our state living in nursing facilities is not a tenable solution, and would, in fact, be counterproductive public policy. We are willing to further evaluate this and other programs this summer and fall in a public discussion led by a state agency along with other state agencies of SRS, KDOA, and the federal government.

Thank you.

Memorandum

Donald A. Wilson
President

To: House Appropriations Committee
From: Kansas Hospital Association
Thomas L. Bell, Executive Vice President
Re: **HB 2470**
Date: May 1, 2003

The Kansas Hospital Association appreciates the opportunity to comment regarding the provisions of HB 2470. This bill would enact a provider tax on Kansas nursing facilitates and hospital long term care units. We have serious concerns about this legislation.

The idea of a tax on Kansas health care providers to raise additional Medicaid funds has previously been considered and rejected by the Kansas legislature. It has resurfaced, however, because of the severe budget concerns that face the State of Kansas. We have discussed this issue with numerous legislators this session and have concluded that we can no longer reject the idea out of hand. At the same time, our discussions with our members and those in other states have led us to believe that it would be a mistake to pass HB 2470 with the short time left this session.

In its simplest form, our opposition to HB 2470 stems from the fact that there are too many unanswered questions about the legislation. Here are just a few:

- How would the legislature assure that each provider would be "made whole" under the program? If this cannot be done, HB 2470 becomes a true tax on certain providers and their patients.

- How do we assure the moneys raised will be spent on increasing Medicaid reimbursement and not used to fund other state programs?

- How do we assure federal approval of the program at a time when the government is not anxious to spend more federal money?

- Are we confident that the approach of HB 2470 is supported by the affected provider groups? Experience form other states has taught us that these programs will fail if there is not support from the affected parties.

Kansas Hospital Association
215 SE 8th Ave. • P.O. Box 2308 • Topeka, KS • 66601 • 785/233-7436 • Fax: 785/23

- Is it best to have such a program be run by the state, or should it be handled in the private sector, as in some other states?

In summary, KHA is opposed to the passage of HB 2470 because there has been inadequate discussion regarding its operation and impact.

Thank you for your consideration of our comments.

MARGARET FARLEY
ATTORNEY AT LAW
900 MASSACHUSETTS, SUITE 601
LAWRENCE, KANSAS 66044
OFFICE: (785) 842-2345
FAX: (785) 331-0303

OF COUNSEL:
RONALD SCHNEIDER

Honorable Melvin Neufeld, Chairperson, House Appropriations Committee and Committee Members

RE: Testimony on HB 2470, Sections 1-6 quality assurance assessment
May 1, 2003

As a board member of Kansas Advocates for Better Care, and long time nursing home consumer advocate, I am strenuously opposed to this bed tax. I offer the following comments:

- Upon whom is the "quality assurance assessment" tax actually going to fall? The only real choices are residents or the government (i.e., taxpayers). **Nursing homes** which "pay" such taxes **will simply pass the expense on.**
- Many of the terms in the statute are **simply too vague to be meaningful**. For example, even though the bill creates a "quality assurance" assessment, there is **not one provision** in the bill **for assuring anything other than** that **the tax** will be levied.
- The **purpose** of the bill **is also** conveniently **vague**. What does it mean exactly?
- The vague purpose of the bill is then eviscerated by section 4(d) which provides that **a good percentage of the (unknown) percentage can be used for something else.**
- Section 4(d) pits one cohort of elders in need of care (nursing facility residents) against the other (e.g., HCBS consumers). Budgetary constraints no doubt force tough choices among programs in need; but here **one group will be forced to pay for services to the other.** This will add to the KDOA's list of internal conflicts of interest.
- For private pay residents, such a tax can, just like higher private pay rates, **speed up the spend-down to Medicaid dependency.**
- There is no methodology for determining the percentage to levy; no factors to consider; no specific outcomes to be attained; **no method/audit to test the outcomes**. Instead, the bill authorizes a percentage of gross revenues to deliver an "appropriate sum of money".
- If this bill is to move forward, I would suggest an **amendment** to **first examine the profit margins, non-allowable administrative costs, management compensation packages and lobbying expenses** of each facility owner before we pay more money.
- The latter provisions of the bill which make reference to its purpose omit the phrase "quantity and". (See e.g., sections 4 (a), (c) and (d).) Why?
- Finally, we have no assurance that the federal CMS will approve this plan for its certified facilities. In these tight times, **why spend administrative, legal and staff costs for a plan that carries such a risk of rejection by the regulators?**

Respectfully submitted, Margaret Farley

HOUSE APPROPRIATIONS

DATE 5-1-2003
ATTACHMENT 12

KHCA
Kansas Home Care Association • 1512 B Legend Trail Drive • Lawrence, Kansas 66047
(785) 841-8611 • Fax (785) 749-5414 • khca@kshomecare.org • www.kshomecare.org

To: House Appropriations Committee
From: Linda Lubensky, Executive Director
Kansas Home Care Association
Date: April 30, 2003
Re: HB 2470, quality assurance assessment on facilities for skilled nursing

I appreciate the opportunity to express some concerns regarding HB 2470. Despite the title, "quality assurance assessment," this bill is simply a means to create a provider tax and enable the state to leverage more federal dollars. It is not a new strategy, but one that many states have implemented, or tried to. Because currently so many states are desperate to find new revenue, the federal government has begun to look at the provider tax/assessment extremely carefully and to narrow its application. If any loopholes exist, they won't be there long.

Although this bill only specifically addresses skilled nursing facilities and LTC hospital units, it is easy to anticipate its future application to other health care provider groups. Because of that, it is important that we raise our concerns about the concept and the impact on the provider. Provider taxes place the entire element of risk on the shoulders of the provider. Great benefits are promised for the provider, but, in too many cases in other states, that has not happened and the provider has been the loser. Those states, that have done it successfully, advise going very slowly and with great caution. They say that a successful program must involve negotiations with the provider community, and that trust and confidence, on both sides, must be carefully built. That has not occurred in Kansas.

Our entire health care community in Kansas is struggling at this time, due to significant cuts in Medicare, Medicaid, and even private insurance. This is particularly true in our rural areas, where we have already lost many providers and will, undoubtedly, lose more. Providers cannot stay in business if they cannot cover their costs. In the eyes of the provider, this tax has a greater potential to be another significant cut, rather than a benefit.

I hope that the committee will understand that a great deal more research and consideration of this concept is needed before decisions are made.

Heart of America
ALZHEIMER'S®
ASSOCIATION
Someone to Stand by You

Topeka Regional Office
P.O. Box 1427 • Topeka, KS 66601
Location: 515 S. Kansas Avenue,
Suite B-2
785.234.2523 • FAX 785.234-0919
marcene.grimes@alz.org

MARCENE GRIMES
REGIONAL DIRECTOR

The mission of the Heart of America Chapter is to provide education and leadership to enhance care and support services for those affected by Alzheimer's disease, while supporting efforts to eliminate the disease.

April 30, 2003

Honorable Representative Melvin Neufeld
Kansas Capital Building • Room 517-S
Topeka, Kansas 66612

Re: House Bill 2470

Dear Chairman Neufeld and esteemed members of the Appropriations Committee:

The Alzheimer's Association Heart of America Chapter is opposed to the provisions and mandates of House Bill 2470. We recognize the current budget and health care crisis in Kansas, but are not confident HB 2470 would remedy either:

- On the contrary, it may create a larger demand for long term care Medicaid dollars as private pay nursing facility residents spend down their assets even more quickly with the addition of a "quality assurance assessment."

- There is no guarantee the "quality assurance assessment" pool will be used to increase nursing facility reimbursement and improve services. The legislature has historically changed laws to authorize expenditures for items other than those designated in the original language of the law.

- Finally, there is no guarantee that provider reimbursement will reflect the actual amount paid in "quality assurance assessment" taxes. Federal law prohibits tying the returned payment amount to the assessment.

Hundreds of Kansas dementia victims are currently living or will eventually be living in long term care nursing facilities. The "quality assurance assessment" would create an additional burden for those able to pay privately for the care they receive and would not improve their quality of life. For this reason and those stated above, the Alzheimer's Association adamantly opposes House Bill 2470.

Questions may be directed to: Jennifer Haller, Public Policy Coordinator
jennifer.haller@alz.org

HOUSE APPROPRIATIONS

DATE 5-1-2003
ATTACHMENT 14

Please Oppose House Bill 2470

May 1, 2003

My name is Howard Bartrug. I am 81 years old. I am a retired small business owner. I live in an apartment at Brewster Place here in Topeka. I'd like to thank the members of this committee for the opportunity to talk with you about what this bill could mean to people like my wife and me.

My wife, Charlotte, lives at the health care center at Brewster Place. We've worked hard all our lives to be able to enjoy retirement and take care of our own financial needs. Now my wife needs around-the-clock care and is living in the health care center at Brewster Place. It's tough, but we pay our own way. Now I find out that the state might pass a new tax on nursing homes that would raise the nursing home rate.

I don't think it is right that Charlotte and I should be penalized just because we saved enough to take care of our own needs in retirement. I hope you think this through and vote no on taxing us. After my money is gone I may be forced to go on Medicaid, too. It doesn't make sense for the state to speed this process up.

I ask you to do whatever you can to make sure the nursing home resident tax doesn't go through.

Thank you very much.