

Approved: February 2, 2006
Date

MINUTES OF THE SENATE WAYS AND MEANS COMMITTEE

The meeting was called to order by Chairman Dwayne Umbarger at 10:40 A.M. on January 12, 2006, in Room 123-S of the Capitol.

All members were present except:
Senator Steve Morris- excused

Committee staff present:

Jill Wolters, Revisor of Statutes Office
Michael Corrigan, Revisor of Statutes Office
J. G. Scott, Kansas Legislative Research Department
Reagan Cussimano, Kansas Legislative Research Department
Audrey Dunkel, Kansas Legislative Research Department
Susan Kannarr, Kansas Legislative Research Department
Carolyn Rampey, Kansas Legislative Research Department
Judy Bromich, Chief of Staff
Mary Shaw, Committee Secretary

Conferees appearing before the committee:

Senator Derek Schmidt
Eric Rucker, Office of the Attorney General
Barb Hinton, Legislative Post Auditor, Division of Legislative Post Audit

Others attending:
See attached list.

Chairman Umbarger opened the public hearing on:

SB 327--Creating the office of inspector general within the Kansas health policy authority

Staff briefed the Committee on the bill.

The Chairman welcomed Senator Derek Schmidt, Chairman of the Interim Special Committee on Medicaid Reform, who testified in support of **SB 327** (Attachment 1). Senator Schmidt explained that the bill was drafted and is recommended by the Interim Special Committee on Medicaid Reform. The bill is one of several recommendations aimed at improving the accountability and integrity of the State's Medicaid program by improving oversight and scrutiny of these programs. Senator Schmidt expressed his concern regarding the system and not of individuals.

Senator Schmidt expressed concern that the Kansas Medicaid System has grown threefold since 1998 and today accounts for \$2.2 billion in public spending. At the current rate of growth, he noted that Medicaid expenditures will reach \$3.3 billion in 2011. Establishing an independent inspector general would liberate program staff to do their jobs of delivering services rather than trying to fill a dual role of service delivery and self-policing. In his written testimony, Senator Schmidt listed four potential refinements to **SB 327** for the Committee's consideration.

Senator Schmidt provided copies of a balloon amendment that would propose to incorporate some of the changes from the model language in the bill (Attachment 2). He also noted that in the course of discussions with interested parties, there is a policy decision to be made about who appoints the inspector general. Senator Schmidt noted that the way the bill is drafted, the Governor would be the appointive authority and the Senate would confirm the inspector general. He noted that the Attorney General is statutorily obligated, and the federal government is obligated, to do enforcement of fraud activities and this is where it might make more sense to have the Attorney General be the appointed authority for the inspector general, still subject to Senate confirmation.

There were additional areas that Senator Schmidt highlighted where others have suggested changes that are

CONTINUATION SHEET

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not in the balloon. He discussed where to put the office of the inspector general. It was noted that the interim committee discussed that in the drafting stage of the bill and came up with putting it in the Kansas Health Policy Authority. In the Kansas Bureau of Investigation there is a model of an independent entity that is not housed with any of the agencies designated to oversee or investigate which could be replicated, and there is a direct line of authority. He noted that federal law requires maintaining a surveillance utilization review unit, and by contract, there is EDS and they operate it. There is an issue that was discovered in the interim committee that right now the contract people interact directly with the program at Medicaid. It is humanly difficult when you have the watchdogs interacting and working with or working for the people that are supposed to be watched.

The Chairman recognized Eric Rucker, Chief of Staff, Office of Attorney General, who explained that the intention of the Attorney General's Office being listed as a neutral conferee was from the perspective of the views of law enforcement and to answer any questions related as to how the inspector general position would work. He noted that by federal law their office is limited and prohibited from data-mining information to ferret out fraud, waste, abuse, misconduct, etc. They operate under a system whereby someone, such as EDS, passes referrals to their office concerning suspicions of inappropriate conduct or other abuse and this is how their office becomes involved, and only at that juncture. Once the referral is made to their office, Mr. Rucker explained that they have professional criminal investigators who are licensed law enforcement officials of the State of Kansas that conduct a criminal investigation to determine whether or not, subsequently, prosecution is warranted. He noted that this is the current system.

Mr. Rucker continued and explained that as the investigator general system is proposed, or as they understand it, the inspector general would have responsibility to gather evidence which would be tantamount to a referral to their office for subsequent prosecution. He noted that the balloon language is highly favored by their office because of streamlining the result. Mr. Rucker noted that the mere creation of a state agency that would not have a direct link to the prosecutors that are responsible for bringing justice to the system, is believed to be unwarranted and by knocking down as many obstacles as possible, those making referrals, investigating and subsequent prosecution, would be favorable. (No written testimony was submitted.)

Senator Barone requested information regarding the fraud unit that is currently in place in the Attorney General's Office. He inquired how active the unit is and how many referrals, investigations, and prosecutions the unit has made. Mr. Rucker responded that he would provide this information.

Chairman Umbarger acknowledged Barb Hinton, Legislative Post Auditor, Legislative Division of Post Audit, who explained to the Committee that it is very important to have an inspector general in the Medicaid part of it. Ms. Hinton explained that the Medicaid program is a huge program and large amounts of dollars going to it. She noted that the Legislature, through their office, has the ability to get ad hoc kinds of reviews of the Medicaid program and noted that this has been done in the past. Ms. Hinton mentioned that every time Legislative Post Audit has looked at Medicaid, in whatever aspect, they have found things that are either abuse and potential fraud, but have no enforcement powers. She noted that if there were people that could be assigned to do that, and look at it full time, possibly significant amount of fraud, abuse or inefficiencies could be identified. Ms. Hinton, as Legislative Post Auditor, mentioned that she cannot stress enough how important it is to have independent reviews. She encouraged the Committee to think about it. Ms. Hinton also noted that she realizes it would mean spending more money, but their office with a staff of about 25 people spends approximately \$2 million dollars, excluding the financial audits. She encouraged the Committee to look at the return on the investment, if there is an investigator general in place regarding the Medicaid program. (No written testimony was submitted.)

Senator Kelly requested information regarding the number of other states that have offices of inspector generals and how do they house the offices. The Attorney General's Office will provide this information.

Chairman Umbarger thanked all the conferees for appearing before the Committee and requested that the Attorney General's Office visit with him, Senator Emler and Senator Barone regarding **SB 327**.

The meeting adjourned at 11:35 a.m. The next meeting was scheduled for January 13, 2006.