

Approved: 3-25-96
Date

MINUTES OF THE SENATE COMMITTEE ON PUBLIC HEALTH AND WELFARE.

The meeting was called to order by Chair Sandy Praeger at 10:00 a.m. on March 12, 1996 in Room 526-S of the Capitol.

All members were present except:

Committee staff present:

Bill Wolff, Legislative Research Department
Norman Furse, Revisor of Statutes
Jo Ann Bunten, Committee Secretary

Conferees appearing before the committee:

Terri Roberts, Kansas State Nurses Association
Joe Furjanic, Kansas Chiropractic Association
Helen Stephens, Kansas Academy of Physician Assistants
Bob Williams, Kansas Pharmacy Association

Others attending: See attached list

Appointment of subcommittee on HB 2423 - Alcohol and drug screening program for welfare recipients

The Chair appointed Senator Langworthy, Chair, and Senators Ramirez and Jones as members of subcommittee on HB 2423.

Subcommittee report on SB 660 - Kansas medicaid fraud control act

Senator Jones, Chair of the subcommittee on SB 660, and the Revisor briefed the Committee on the subcommittee's report and recommendations in the balloon of the bill. (Attachment 1) During Committee discussion, it was pointed out by staff that proposed language on page 3, line 19, of the bill should read "required by" law instead of "regarded as". It was also recommended that changes be made on page 6, line 24 and page 7, line 18, the word "shall" be changed to "may" which would allow a violation of the act to be at the discretion of the court.

Senator Jones made a motion the Committee adopt the subcommittee report on SB 660, seconded by Senator Langworthy. The motion carried.

Senator Langworthy made a motion the Committee amend language in the balloon of the bill substituting "shall" to "may" on page 6, line 24 and page 7, line 18, seconded by Senator Praeger. The motion carried.

Senator Papay made a motion the Committee adopt the proposed amendments as shown in the balloon of the bill, and that SB 660 as amended be recommended favorably for passage, seconded by Senator Langworthy. The motion carried.

Hearing on Sub HB 2771 - Impact report concerning proposed changes in scope of practice of a health care provider

Terri Roberts, KSNA, expressed support for Sub HB 2771 and noted that the impact report in this bill would provide a framework for definitive information for the legislature's review, and that the seven criteria in the bill encompasses information commonly asked for by legislators in reviewing changes of scope of practice. (Attachment 2) During Committee discussion it was noted that the proposal of having a technical review committee had been scrapped, seven criteria had been agreed upon by a large number of provider representatives, and that KDHE would not be involved in this process. Ms. Roberts also noted that the fiscal report showed approximately \$41,000 state general funds would be needed to do 5 or 6 reviews a year.

Helen Stephens, Kansas Academy of Physician Assistants, also expressed support for the bill noting that the criteria requirement in the bill would provide valuable information for the legislature when making decisions regarding the scope of practice issue.

Joe Furjanic, Kansas Chiropractic Association, testified in support of the bill and noted that the bill, in its present form, is a workable compromise among many health care provider groups. He felt that the proposed legislation would set up a mechanism whereby information provided to legislative committees would assist in the decision making process without unnecessary burdens being placed upon provider groups. (Attachment 3)

Bob Williams, Kansas Pharmacy Association, also spoke in support of Sub HB 2771 and recommended that language on page 1, line 21, "or administrative regulation to perform" be stricken from the bill.

There were no opponents to the bill.

Adjournment

The meeting was adjourned at 10:40 a.m.

The next meeting is scheduled for March 13, 1996.

SENATE PUBLIC HEALTH AND WELFARE COMMITTEE GUEST LIST

DATE: 3-12-96

NAME	REPRESENTING
Stanley P. Sutton	Community Health Improvement, KHEL, KDHE
Nancy Zogelman	Pfizer
Ruth Mann	Kansas Health Institute
Jenosa Menauer	HIAA
Melise Wangeman	Ken Ebert & Weir
Crystal Coker	
Joe Furganic	KCA
JASON PITTSBERGER	BASS Smart
John M. Gray	
Wen Hanson	KMIS
Dawn Reid	KSNA
Amelie St. Scheller	ESU / KSNA
Tammi Roberts	KSNA
Terri Shockley	KSNA
Messen Griss	KPTA
Lesa Bray	KDHE
GARY Robbins	Ks Opt Assn
JOHN C. BOTTENBERG	DELTA DENTAL
Wanda Jeff	Ks N.O.C.

Difer Stephen KAPA
 Harold Ricca KDO
 Michelle Peterson Peterson Public Affairs Group

SENATE BILL No. 660

By Committee on Public Health and Welfare

2-12

9 AN ACT enacting the Kansas medicaid fraud control act; declaring certain
10 acts to be crimes and providing penalties therefor; authorizing civil
11 actions and penalties for certain violations; granting certain powers to
12 and imposing certain duties upon the attorney general; amending
13 K.S.A. 21-3106 and repealing the existing section.

14
15 *Be it enacted by the Legislature of the State of Kansas:*

16 New Section 1. Sections 1 to [14] inclusive, and amendments thereto
17 shall be known and may be cited as the Kansas medicaid fraud control
18 act.

19 New Sec. 2. As used in this act:

20 (a) "Attorney general" means the attorney general, employees of the
21 attorney general or authorized representatives of the attorney general.

22 (b) "Benefit" means the receipt of money, goods, items, facilities,
23 accommodations or anything of pecuniary value.

24 (c) "Claim" means an electronic, electronic impulse, facsimile, mag-
25 netic, oral, telephonic or written communication that is utilized to identify
26 [a good] service, item, facility or accommodation as reimbursable to the
27 Kansas medicaid program, or its fiscal agents, or which states income or
28 expense and is or may be used to determine a rate of payment to the
29 Kansas medicaid program, or its fiscal agent.

30 (d) "Fiscal agent" means any corporation, firm, individual, organiza-
31 tion, partnership, professional association or other legal entity which,
32 through a contractual relationship with the department of social and re-
33 habilitation services and thereby, the state of Kansas, receives, processes
34 and pays claims under the Kansas medicaid program.

35 (e) "Family member" means spouse, child, grandchild of any degree,
36 parent, grandparent of any degree, brother, sister, half-brother, half-sis-
37 ter, uncle, aunt, nephew or niece, whether biological, step or adoptive.

38 (f) "Medicaid program" means the Kansas program of medical assis-
39 tance for which federal, state or ~~local~~ ~~monies~~ or any combination thereof,
40 are expended as administered by the department of social and rehabili-
41 tation services, or its fiscal agent, or any successor federal or state, or
42 both, health insurance program or waiver granted thereunder.

43 (g) "Person" means any agency, association, corporation, firm, limited

[13

The Kansas medicaid fraud control act shall be part of and supplemental to the Kansas criminal code.

[any goods

[mother-in-law, father-in-law

[brother-in-law,

[sister-in-law

[or

[monies,

Senate Public Health & Welfare
Date: 3-12-96
Attachment No. 1

1-2

1 liability company, limited liability partnership, natural person, organiza-
2 tion, partnership or other legal entity, the agents, employees, independent
3 contractors, and subcontractors, thereof, and the legal successors thereto,
4 and any official, employee or agent of a state or federal agency having
5 regulatory or administrative authority over the medicaid program.

6 (h) "Provider" means a person who has applied to participate in, who
7 currently participates in, who has previously participated in, who attempts
8 or has attempted to participate in the medicaid program, by providing or
9 claiming to have provided goods, services, items, facilities or accommo-
10 dations.

11 (i) "Recipient" means an individual, either real or fictitious, in whose
12 behalf any person claimed or received any payment or payments from
13 the medicaid program, or its fiscal agent, whether or not any such indi-
14 vidual was eligible for benefits under the medicaid program.

15 (j) "Records" mean all written documents and electronic or magnetic
16 data, including, but not limited to, medical records, X-rays, professional,
17 financial or business records relating to the treatment or care of any re-
18 cipient; goods, services, items, facilities or accommodations provided to
19 any such recipient; rates paid for such goods, services, items, facilities or
20 accommodations; and goods, services, items, facilities, or accommo-
21 dations provided to nonmedicaid recipients to verify rates or amounts of
22 goods, services, items, facilities or accommodations provided to medicaid
23 recipients, as well as any records that the medicaid program, or its fiscal
24 agents require providers to maintain.

25 (k) "Sign" means to affix a signature, directly or indirectly, by means
26 of handwriting, typewriter, stamp, computer impulse or other means.

27 (l) "Statement or representation" means an electronic, electronic im-
28 pulse, facsimile, magnetic oral, telephonic, or written communication that
29 is utilized to identify [a good], service, item, facility or accommodation as
30 reimbursable to the medicaid program, or its fiscal agent, or that states
31 income or expense and is or may be used to determine a rate of payment
32 to the medicaid program, or its fiscal agent.

[any goods

33 New Sec. 3. (a) Making a false claim, statement, or representation
34 to the medicaid program is, knowingly and with intent to defraud, making,
35 presenting, submitting, offering or causing to be made, presented, sub-
36 mitted or offered:

37 (1) Any false or fraudulent claim for payment for any [good], service,
38 item, facility, accommodation for which payment may be made, in whole
39 or in part, under the medicaid program, whether or not the claim is
40 allowed or allowable;

[goods

41 (2) any false or fraudulent statement or representation for use in de-
42 termining payments which may be made, in whole or in part, under the
43 medicaid program, whether or not the claim is allowed or allowable;

1-3

1 (3) any false or fraudulent report or filing which is or may be used in
 2 computing or determining a rate of payment for any [good] service, item,
 3 facility or accommodation, for which payment may be made, in whole or
 4 in part, under the medicaid program, whether or not the claim is allowed
 5 or allowable; [goods]

6 (4) any false or fraudulent statement or representation made in con-
 7 nection with any report or filing which is or may be used in computing
 8 or determining a rate of payment for any [good] service, item, facility or
 9 accommodation for which payment may be made, in whole or in part,
 10 under the medicaid program, whether or not the claim is allowed or
 11 allowable; [goods]

12 (5) any statement or representation for use by another in obtaining [a
 13 good] service, item, facility or accommodation for which payment may be
 14 made, in whole or in part, under the medicaid program, knowing the
 15 statement or representation to be false, in whole or in part, by commission
 16 or omission, whether or not the claim is allowed or allowable; [any goods]

17 (6) any claim for payment, for any [good] service, item, facility, or [goods]
 18 accommodation, which is not medically necessary in accordance with pro-
 19 fessionally recognized [standards] for which payment may be made, in [parameters or as otherwise regarded as law]
 20 whole or in part, under the medicaid program, whether or not the claim
 21 is allowed or allowable; or

22 (7) any wholly or partially false or fraudulent book, record, document,
 23 data or instrument, which is required to be kept or which is kept as
 24 documentation for any [good] service, item, facility or accommodation or [goods]
 25 of any cost or expense claimed for reimbursement for any [good] service, [goods]
 26 item, facility or accommodation for which payment is, has been, or can
 27 be sought, in whole or in part, under the medicaid program, whether or
 28 not the claim is allowed or allowable.

29 ~~(b) Making a false claim, statement or representation to the medicaid~~ [(8)
 30 ~~program is knowingly making, presenting, submitting, offering or causing~~
 31 ~~to be made, presented, submitted or offered, any wholly or partially false~~
 32 ~~or fraudulent record, document, data or instrument to any properly iden-~~
 33 ~~tified law enforcement officer, any properly identified employee or au-~~
 34 ~~thorized representative of the attorney general, or to any properly iden-~~
 35 ~~tified employee or agent of the department of social and rehabilitation~~
 36 ~~services, or its fiscal agent, in connection with any audit or investigation~~
 37 ~~involving any claim for payment or rate of payment for any [good] service,~~ [goods]
 38 ~~item, facility or accommodation payable, in whole or in part, under the~~
 39 ~~medicaid program.~~

40 ~~(c) Making a false claim, statement or representation to the medicaid~~ [(9)
 41 ~~program is knowingly, making, presenting, submitting, offering or causing~~
 42 ~~to be made, presented, submitted, or offered, directly or indirectly, any~~ , directly or indirectly,
 43 false or fraudulent statement or representation made, to influence any

"repealed by"

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1 acts or decision of any ~~person exercising any authority in~~ the Kansas med-
2 icaid program.

[official, employee, or agent of a state or
federal agency having regulatory or
administrative authority over

3 (d) (1) As defined by subsection (a), making a false claim, statement
4 or representation to the medicaid program where the aggregate amount
5 of payments illegally claimed is \$25,000 or more is a severity level 7,
6 nonperson felony.

[(1) through (a) (7)]

7 (2) As defined by subsection (a), making a false claim, statement or
8 representation to the medicaid program where the aggregate amount of
9 payments illegally claimed is at least \$500 but less than \$25,000 is a se-
10 verity level 9, nonperson felony.

[(1) through (a) (7)]

11 (3) As defined by subsection (a), making a false claim, statement or
12 representation to the medicaid program where the aggregate amount of
13 payments illegally claimed is less than \$500 is a class A misdemeanor.

[(1) through (a) (7)]

14 (4) As defined by subsections ~~(b) and (c)~~, making a false claim, state-
15 ment or representation to the medicaid program is a severity level 9,
16 nonperson felony.

[(a) (8) and (a) (9)]

17 ~~[New Sec. 4. (a) A person shall be deemed to have known that a claim,
18 statement, representation, report, filing, book, record, document, data or
19 instrument was false or fraudulent, if the person knew, or by virtue of the
20 person's position, authority or responsibility had reason to know of the
21 false or fraudulent nature of the claim, statement, representation, report,
22 filing, book, record, document, data or instrument.~~

[(e) In determining what is medically necessary
pursuant to subsection (a) (6) of this section
the attorney general may contract with or
consult with qualified health care providers
and other qualified individuals to identify
professionally recognized parameters for the
diagnosis or treatment of the recipient's
condition, illness or injury.

23 ~~(b) A person shall be deemed to have made, presented, submitted,
24 offered or caused to be made, presented, submitted, or offered a claim,
25 statement, representation, report, filing, book, record, document, data or
26 instrument if the person-~~

27 ~~(1) Had the authority or responsibility to:~~

28 ~~(A) Make, present, submit, or offer the claim, statement, represen-
29 tation, report, filing, book, record, document, data or instrument;~~

30 ~~(B) supervise another who made, presented, submitted, or offered
31 the claim, statement, representation, report, filing, book, record, docu-
32 ment, data or instrument; or~~

33 ~~(C) authorize the making, presenting, submitting, or offering of the
34 claim, statement, representation, report, filing, book, record, document,
35 data or instrument, whether by operation of law, business or professional
36 practice, of office procedure; and~~

37 ~~(2) exercised that authority or responsibility or failed to exercise that
38 authority or responsibility and, as a direct or indirect result, the false or
39 fraudulent claim, statement, representation, report, filing, book, record,
40 document, data or instrument was made, presented, submitted or offered.~~

41 ~~(c) A person shall be deemed to have made, presented, submitted,
42 offered or caused to be made, presented, submitted, or offered a claim,
43 statement, representation, report, filing, book, record, document, data or~~

1 ~~[instrument if the person made, presented, submitted, offered or caused~~
 2 ~~to be made, presented, submitted, or offered the claim, statement, rep-~~
 3 ~~resentation, report, filing, book, record, document, data or instrument,~~
 4 ~~whether or not the person had the authority to make, present, submit,~~
 5 ~~offer or cause to be made, presented, submitted, or offered the claim,~~
 6 ~~statement, representation, report, filing, book, record, document, data or~~
 7 ~~instrument.]~~

and by renumbering sections accordingly

8 New Sec. 5. (a) No person nor family member of such person shall:

9 (1) Knowingly and intentionally solicit or receive any remuneration,
10 including but not limited to any kickback, bribe or rebate, directly or
11 indirectly, overtly or covertly, in cash or in kind:

12 (A) In return for referring or refraining from referring an individual
13 to a person for the furnishing or arranging for the furnishing of any ~~good~~ goods
14 service, item, facility or accommodation for which payment may be made,
15 in whole or in part, under the medicaid program; or

16 (B) in return for purchasing, leasing, ordering or arranging for or
17 recommending purchasing, leasing or ordering any ~~good~~ goods service, item,
18 facility or accommodation for which payment may be made, in whole or
19 in part, under the medicaid program.

20 (2) Knowingly and intentionally offer or pay any remuneration, in-
21 cluding, but not limited to, any kickback, bribe or rebate, directly or
22 indirectly, overtly or covertly, in cash or in kind to any person to induce
23 such person:

24 (A) To refer or refrain from referring an individual to a person for
25 the furnishing or arranging for the furnishing of any ~~good~~ goods service, item,
26 facility or accommodation for which payment may be made, in whole or
27 in part, under the medicaid program; or

28 (B) to purchase, lease, order, or arrange for or recommend purchas-
29 ing, leasing, or ordering any ~~good~~ goods service, item, facility or accommodation
30 for which payment may be made, in whole or in part, under the medicaid
31 program.

32 (b) A violation of this section is a severity level 7, nonperson felony.

33 ~~New Sec. 6. (a) Failure to maintain adequate records is negligently~~
34 ~~failing to maintain such records as are necessary to disclose fully the~~
35 ~~nature of the goods, services, items, facilities or accommodations for~~
36 ~~which a claim was submitted or payment was received under the medicaid~~
37 ~~program, or such records as are necessary to disclose fully all income and~~
38 ~~expenditures upon which rates of payment were based under the medi-~~
39 ~~caid program. Upon submitting a claim for or upon receiving payment~~
40 ~~for goods, services, items, facilities or accommodations under the medi-~~
41 ~~caid program, a person shall maintain adequate records for ~~10~~ years after~~
42 ~~the date on which payment was received, if payment was received, or for~~
43 ~~~~10~~ years after the date on which the claim was submitted, if the payment~~

(c) This section shall not apply to a refund, discount, copayment, deductible, incentive or other reduction obtained by a provider in the ordinary course of business, and appropriately reflected in the claims or reports submitted to the medicaid program, or its fiscal agent nor shall it be construed to prohibit deductibles, copayments or any other cost or risk sharing arrangements which are a part of any program operated by or pursuant to contracts with the medicaid program.

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1 was not received.

2 (b) Failure to maintain adequate records is a class A, nonperson mis-
3 demeanor.

4 New Sec. 7. (a) Destruction or concealment of records is intention-
5 ally destroying or concealing such records as are necessary to disclose
6 fully the nature of the goods, services, items, facilities or accommodations
7 for which a claim was submitted or payment was received under the
8 medicaid program, or such records as are necessary to disclose fully all
9 income and expenditures upon which rates of payment were based under
10 the medicaid program. Upon submitting a claim for or upon receiving
11 payment for goods, services, items, facilities or accommodations under
12 the medicaid program, a person shall not destroy or conceal any records
13 for [10] years after the date on which payment was received, if payment
14 was received, or for [10] years after the date on which the claim was sub-
15 mitted, if the payment was not received.

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16 (b) Destruction or concealment of records is a severity level 9, non-
17 person felony.

18 New Sec. 8. ~~(a) Repayment of payments, goods, services, items, fa-~~
19 ~~ilities or accommodations wrongfully obtained shall not constitute a de-~~
20 ~~fense to or ground for dismissal of criminal charges or civil actions~~
21 ~~brought pursuant to this act.~~

Offers of repayment or repayment occurring
after the filing of criminal charges or civil
actions,

22 ~~(b) Evidence of repayment is inadmissible for any purpose during the~~
23 ~~trial of any action brought pursuant to this act.~~

24 New Sec. 9. (a) Any person convicted of a violation of this act, shall
25 be liable, in addition to any other civil and criminal penalties provided by
26 law, for all of the following:

law

- 27 (1) Payment of full restitution of the amount of the excess payments;
- 28 (2) payment of interest on the amount of any excess payments at the
29 maximum legal rate in effect on the date the payment was made to the
30 person for the period from the date upon which payment was made, to
31 the date upon which repayment is made;
- 32 (3) payment of all reasonable expenses that have been necessarily
33 incurred in the enforcement of this act, including, but not limited to, the
34 costs of the investigation, litigation and attorney fees.

35 (b) All moneys recovered pursuant to subsection (a)(1) and (2), shall
36 be paid and deposited in the state treasury and credited to the medicaid
37 fraud reimbursement fund, which is hereby established in the state treas-
38 ury. Moneys in the medicaid fraud reimbursement fund shall be divided
39 and payments made from such fund to the federal government and af-
40 fected state ~~and local~~ agencies for the refund of moneys falsely obtained
41 from the federal ~~state and local~~ governments.

and

42 (c) All moneys recovered pursuant to subsection (a)(3) shall be de-
43 posited in the state treasury and credited to the medicaid fraud prose-

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1 cution revolving fund, which is hereby established in the state treasury.
 2 Moneys in the medicaid fraud prosecution revolving fund may be appro-
 3 priated to the attorney general, or to any county or district attorney who
 4 has successfully prosecuted an action for a violation of this act and been
 5 awarded such costs of prosecution, in order to defray the costs of the
 6 attorney general and any such county or district attorney in connection
 7 with their duties provided by this act. No moneys shall be paid into the
 8 medicaid fraud prosecution revolving fund pursuant to this section unless
 9 the attorney general or appropriate county or district attorney has com-
 10 menced a prosecution pursuant to this section, and the court finds in its
 11 discretion that payment of attorney fees and investigative costs is appro-
 12 priate under all the circumstances, and the attorney general, or county
 13 or district attorney has proven to the court that the expenses were rea-
 14 sonable and necessary to the investigation and prosecution of such case,
 15 and the court approves such expenses as being reasonable and necessary.

16 New Sec. 10. (a) The attorney general may bring a civil action pur-
 17 suant to this section against any person who violates this act.

18 (1) Any person who violates this act shall be liable, in addition to any
 19 other civil and criminal penalties provided by law, for all of the following:

20 (A) Payment of full restitution of the amount of the excess payments;

21 (B) payment of interest on the amount of any excess payments at the
 22 maximum legal rate in effect on the date the payment was made to the
 23 person for the period from the date upon which payment was made, to
 24 the date upon which repayment is made;

25 (C) payment of all reasonable expenses that have been necessarily
 26 incurred in the enforcement of this act, including, but not limited to, the
 27 costs of the investigation, litigation and attorney fees.

28 (2) Any person who violates this act may be liable, in addition to any
 29 other civil or criminal penalties provided by law, for all of the following:

30 (A) Payment of an amount equal to three times the amount of any
 31 excess payments;

32 (B) payment of a sum of not less than \$5,000 nor more than \$10,000
 33 for each violation of this act.

34 (b) All moneys recovered pursuant to subsections (a)(1)(A), (a)(1)(B),
 35 (a)(2)(A), and (a)(2)(B) shall be deposited in the state general fund and
 36 credited to the medicaid fraud reimbursement fund. Moneys in the med-
 37 icaid fraud reimbursement fund shall be divided and payments made
 38 from such fund to the federal government and affected state ~~and local~~
 39 agencies in order to refund moneys falsely obtained from the federal,
 40 state ~~and local~~ governments.

41 (c) All moneys recovered pursuant to subsection (a)(1)(C) shall be
 42 deposited in the state treasury and credited to the medicaid fraud pros-
 43 ecution revolving fund. Moneys in the medicaid fraud prosecution re-

} and

8-1

1 volving fund may be appropriated to the attorney general if the attorney
 2 general has successfully prosecuted an action for a violation of this act
 3 and has been awarded such costs of prosecution, in order to defray the
 4 costs incurred by the attorney general in connection with the discharging
 5 of duties provided by this act. No moneys shall be paid into the medicaid
 6 fraud prosecution revolving fund pursuant to this section unless the at-
 7 torney general has commenced a prosecution pursuant to this section,
 8 and the court finds in its discretion that payment of attorney fees and
 9 investigative costs is appropriate under all the circumstances, and the
 10 attorney general has proven to the court that the expenses were reason-
 11 able and necessary to the investigation and prosecution of such case, and
 12 the court approves such expenses as being reasonable and necessary.

13 (d) A criminal action need not be brought against the person before
 14 civil liability attaches under this section.

15 (e) If recovery was made pursuant to section 9 and amendments
 16 thereto, recovery pursuant to this section is to be limited to subsection
 17 (a)(2).

18 (f) A civil action pursuant to this act must be commenced within [10] _____ [5]
 19 years after the discovery of the violation of this act.

20 New Sec. 11. (a) There is hereby created within the office of the
 21 attorney general a medicaid fraud and abuse division.

22 (b) The medicaid fraud and abuse division shall be the same entity
 23 to which all cases of suspected medicaid fraud shall be referred by the
 24 department of social and rehabilitation services, or its fiscal agent, for the
 25 purpose of investigation, civil action, criminal prosecution or referral to
 26 the district or county attorney for criminal prosecution.

27 (c) In carrying out these responsibilities, the attorney general shall
 28 have all the powers necessary to comply with the federal laws and regu-
 29 lations relative to the operation of the medicaid fraud and abuse division,
 30 the power to investigate, bring civil action and criminally prosecute vio-
 31 lations of this act, the power to cross-designate assistant United States
 32 attorneys as assistant attorneys general, the power to issue, serve or cause
 33 to be issued or served subpoenas or other process in aid of investigations
 34 and prosecutions, the power to administer oaths and take sworn state-
 35 ments under penalty of perjury, the power to serve and execute in any
 36 county, search warrants which relate to investigations authorized by this
 37 act, and the powers of a district or county attorney.

38 New Sec. 12. (a) The attorney general shall be allowed access to all
 39 records which are held by a provider, for the purpose of investigating
 40 whether any person may have violated this act, or for use or potential use
 1 in any legal, administrative or judicial proceeding

42 (b) ~~In carrying out the purposes of the Kansas medicaid fraud control~~
 43 ~~act, the attorney general may take possession of records held by a provider~~

that are directly related to an alleged violation of this act and which are necessary pursuant to the Kansas medicaid fraud control act.

6-1

1 ~~by subpoena, in which case copies of those records obtained by the at-~~
2 ~~torney general which are necessary for the provider to continue doing~~
3 ~~business shall be supplied to the provider.~~

4 [(c)] No person holding such records may refuse to provide the attor- (b)
5 ney general with access to such records on the basis that release would
6 violate any recipient's right of privacy, any recipient's privilege against
7 disclosure or use, or any professional or other privilege or right. The
8 disclosure of patient information as required by this act shall not subject
9 any provider to liability for breach of any confidential relationship be-
10 tween a patient and a provider.

11 Sec. 13. The provisions of this act are not intended to be exclusive
12 remedies and do not preclude the use of any other criminal or civil reme-
13 edy.

Notwithstanding K.S.A. 60-427 and amendments thereto, there shall be no privilege preventing the furnishing of such information or reports as required by this act by any person.

14 Sec. 14. If any section, subsection, paragraph or provision of this act
15 shall be held to be invalid by any court for any reason, it shall be presumed
16 that this act would have been passed by the legislature without such in-
17 valid section, subsection, paragraph or provision, and such finding or con-
18 struction shall not in any way affect the remainder of this act.

19 Sec. 15. K.S.A. 21-3106 is hereby amended to read as follows: 21-
20 3106. (1) A prosecution for murder may be commenced at any time.

21 (2) Except as provided by subsection ~~(6)~~ (7), a prosecution for any of
22 the following crimes must be commenced within five years after its com-
23 mission if the victim is less than 16 years of age: (a) Indecent liberties
24 with a child as defined in K.S.A. 21-3503 and amendments thereto; (b)
25 aggravated indecent liberties with a child as defined in K.S.A. 21-3504
26 and amendments thereto; (c) enticement of a child as defined in K.S.A.
27 21-3509 and amendments thereto; (d) indecent solicitation of a child as
28 defined in K.S.A. 21-3510 and amendments thereto; (e) aggravated in-
29 decent solicitation of a child as defined in K.S.A. 21-3511 and amend-
30 ments thereto; (f) sexual exploitation of a child as defined in K.S.A. 21-
31 3516 and amendments thereto; or (g) aggravated incest as defined in
32 K.S.A. 21-3603 and amendments thereto.

33 (3) Except as provided in subsection ~~(6)~~ (7), a prosecution for any
34 crime must be commenced within 10 years after its commission if the
35 victim is the Kansas public employees retirement system.

36 (4) Except as provided by subsection ~~(6)~~ (7), a prosecution for rape,
37 as defined in K.S.A. 21-3502 and amendments thereto, or aggravated
38 criminal sodomy, as defined in K.S.A. 21-3506 and amendments thereto,
39 must be commenced within five years after its commission.

40 (5) *Except as provided in subsection (7), a prosecution for any crime*
1 *found in the Kansas medicaid fraud control act must be commenced*
2 *within [10] years after its discovery.*

3 (5) (6) Except as provided by subsection ~~(6)~~ (7), a prosecution for any

5

01-1

1 crime not governed by subsections (1), (2), (3) ~~and~~, (4) *and* (5) must be
2 commenced within two years after it is committed.

3 ~~(6)~~ (7) The period within which a prosecution must be commenced
4 shall not include any period in which:

5 (a) The accused is absent from the state;

6 (b) the accused is concealed within the state so that process cannot
7 be served upon the accused;

8 (c) the fact of the crime is concealed;

9 (d) a prosecution is pending against the defendant for the same con-
10 duct, even if the indictment or information which commences the pros-
11 ecution is quashed or the proceedings thereon are set aside, or are re-
12 versed on appeal;

13 (e) an administrative agency is restrained by court order from inves-
14 tigating or otherwise proceeding on a matter before it as to any criminal
15 conduct defined as a violation of any of the provisions of article 41 of
16 chapter 25 and article 2 of chapter 46 of the Kansas Statutes Annotated
17 which may be discovered as a result thereof regardless of who obtains
18 the order of restraint; or

19 (f) whether or not the fact of the crime is concealed by the active act
20 or conduct of the accused, there is substantially competent evidence to
21 believe two or more of the following factors are present: (i) The victim
22 was a child under 15 years of age at the time of the crime; (ii) the victim
23 was of such age or intelligence that the victim was unable to determine
24 that the acts constituted a crime; (iii) the victim was prevented by a parent
25 or other legal authority from making known to law enforcement author-
26 ities the fact of the crime whether or not the parent or other legal au-
27 thority is the accused; and (iv) there is substantially competent expert
28 testimony indicating the victim psychologically repressed such witness'
29 memory of the fact of the crime, and in the expert's professional opinion
30 the recall of such memory is accurate and free of undue manipulation,
31 and substantial corroborating evidence can be produced in support of the
32 allegations contained in the complaint or information but in no event may
33 a prosecution be commenced as provided in this section later than the
34 date the victim turns 28 years of age. Corroborating evidence may in-
35 clude, but is not limited to, evidence the defendant committed similar
36 acts against other persons or evidence of contemporaneous physical man-
37 ifestations of the crime. "Parent or other legal authority" shall include
38 but not be limited to natural and stepparents, grandparents, aunts, uncles
39 or siblings.

40 ~~(7)~~ (8) An offense is committed either when every element occurs,
41 or, if a legislative purpose to prohibit a continuing offense plainly appears,
42 at the time when the course of conduct or the defendant's complicity
43 therein is terminated. Time starts to run on the day after the offense is

1 committed.

2 ~~(8)~~ (9) A prosecution is commenced when a complaint or information
3 is filed, or an indictment returned, and a warrant thereon is delivered to
4 the sheriff or other officer for execution. No such prosecution shall be
5 deemed to have been commenced if the warrant so issued is not executed
6 without unreasonable delay.

7 Sec. 16. K.S.A. 21-3106 is hereby repealed.

8 Sec. 17. This act shall take effect and be in force from and after its
9 publication in the statute book.

1-11



700 SW Jackson, Suite 601
Topeka, Kansas 66603-3731

913/233-8638 * FAX 913/233-5222

the Voice of Nursing in Kansas

Betty Smith-Campbell, M.N., R.N., ANRP
President

Terri Roberts, J.D., R.N.
Executive Director

Terri Roberts J.D. R.N.
913/233-8638

March 12, 1996

**Substitute H.B. 2771
CREDENTIALING AND SCOPE OF PRACTICE REVIEWS
IMPACT REPORT**

Chairperson Praeger and members of the Senate Public Health and Welfare Committee, my name is Terri Roberts J.D., R.N. and I am the Executive Director of the Kansas State Nurses Association here in support of Substitute for H.B. 2771.

The Kansas State Nurses Association represents Registered Nurses, and as you may know, comprises the largest number of licensed healthcare providers in Kansas. There are close to 25,000 Registered Nurse licensed by the Kansas Board of Nursing. The proposal contained in Substitute H.B. 2771, that legislation requested for scope of practice changes for healthcare providers be accompanied by a "IMPACT REPORT" that at a minimum addresses seven specific areas. This report is very similar in process the "Fiscal Impact" Report that is required for any health insurance mandates being considered by the Kansas Legislature.

Background

The seven criteria appearing in New Section 2 of the bill were agreed upon by a large number of provider representatives and lobbyist at a meeting held February 13. The meeting was held following the House Health and Human Services Committee hearing on H.B. 2771, where a number of provider groups expressed concern over the provisions contained in the original bill. At the meeting held on February 13, the providers only agreed on the seven provisions or questions to be used for a process. Further discussions with the Chair of the House Health and Human Services committee led to the mechanism which appears in the Substitute bill calling for an impact report to be filed.

Many reasons providers objected to the original bill on the House. The Kansas Department of Health and Environment testified that they anticipated being able to perform 5 reviews annually, with requests to them needing to be sent over by March 1, and that they wanted the legislature (or chairs of committees) to prioritize the reviews to be done. Providers expressed concern about the composition of the Scope Advisory Committee as it appeared in the original bill and the timeliness and objectivity of such a panel was also an issue for some provider groups.

The mission of the Kansas State Nurses Association is to promote professional nursing, to provide a unified voice for nursing in Kansas and

Constituent of The American Nurses Association

Senate Public Health & Welfare
Date: 3-12-96
Attachment No. 2

Substitute H.B. 2771
March 12, 1996
Page 2

The Impact Report in this bill would provide a framework for definitive information that would be prepared for the legislature's review in conjunction with the legislation. Conceptually, the information provided by the respective provider group seeking changes would also be available to all the other provider groups and they too could file Impact Reports that confirm or dispute the information provided by the provider group seeking the change. The seven criteria in the bill, we believe encompass the information commonly asked for by legislators in reviewing such changes. The impact report format should reduce the emotional and unsubstantiated pleas from provider groups that sometimes characterize presentations. Hopefully data driven decisions will prevail in these matters with these reports being required.

The one question that has been raised since the House passed the bill relates to the questionable interpretation of line 21 which reads:

For purposes of this act, "scope of practice" shall mean the services and procedures a health care provider is authorized by statute or administrative regulation to perform.

It was not the intent to require Impact Reports when regulatory agencies are conducting rules and regulation hearings. We are not certain if this is an issue or not with this language in the bill.

We appreciate the opportunity to appear today in front of the committee and ask for your support of this bill.



Kansas Chiropractic Association

Before the Senate Public Health
and Welfare Committee
March 12, 1996

Testimony of Joe Furjanic
Executive Director
Kansas Chiropractic Association
Substitute for HB 2771

Madam Chairman and members of the committee thank you for this opportunity to speak in favor of Substitute for HB 2771.

The Kansas Chiropractic Association (KCA) supports Substitute for HB 2771. This bill in its present form is a workable compromise among many health care provider groups. The bill will set up a mechanism whereby information will be provided to legislative committees in a manner that will assist in the decision making process without unnecessary burdens being placed upon provider groups.