

Approved: July 13, 2012

(Date)

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairperson Kinzer at 3:30 PM Monday, March 5, 2012 in 346-S of the Capitol.

All members were present except:
Rob Bruchman

Committee staff present:
Katherine McBride, Office of Revisor of Statutes
Jason Thompson, Office of Revisor of Statutes
Lauren Douglass, Kansas Legislative Research Department
Robert Allison-Gallimore, Kansas Legislative Research Department
Nancy Lister, Committee Assistant

Conferees appearing before the Committee:
Representative Ron Ryckman
Ben Sherber, Attorney/Program Manager, HMS
Ronald Smith, Smith, Burnett & Larson LLC
Lance Weeks, Coffman, DeFries & Nothern
Brian Vazquez, Medicaid Attorney, Kansas Department of Health & Environment

Others in attendance:
See attached.

Chairman Kinzer announced the Committee would not be working any bills today but will most likely be working bills previously heard tomorrow.

Chairman Kinzer opened the hearing on **HB 2742–Relating to the medical assistance recovery program**. Katherine McBride provided a brief overview of the bill content.

Representative Ron Ryckman testified in support of **HB 2742** stating he had a gentlemen ask him if he would be interested in saving the state a couple of million dollars, which got him interested. He became aware of the problem in collecting from the estates of deceased Medicaid recipients. He contacted a couple of lawyers he knew and also talked with the Kansas Department of Health and Environment, the Lieutenant Governor, and the Department of Aging. Medicaid, by federal and state law, must recover medical costs from estates to the extent possible. The state keeps 40 percent, with the remainder going to the federal government, and it

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

Continuation Sheet

Minutes of the HOUSE JUDICIARY Committee at 3:30 PM on Monday, March 5, 2012 in 346-S of the Capitol.

could be 50/50 if the federal government makes the change to help cut their spending problems. Recent growth in nursing home care is approximately 5 percent a year. According to AARP, 13 percent of Kansas' population is 65 or older, with about 63,000 residents over 85. The trend seems to be older individuals enter nursing facilities later in life and stay shorter length of time, but the average cost of providing the services is increasing. For Kansas to recover more money, the bill will change several things, including extension of the deadline for estate recovery to open probate or file a claim from 6 months to two years. Kansas has the shortest creditor probate time limits in the nation. (Attachment 1)

Ben Sherber testified in support of **HB 2742** and stated he was a practicing attorney and program manager on estate recovery for the State of Kansas' contractor, Health Management Systems (HMS). He has been working for the past 5 years on estate recovery. Kansas started its Estate Recovery program in 1992, after Congress enacted legislation requiring states to recover long-term care costs from the estates of deceased Medicaid recipients who used Medicaid funds to pay for those services. The bill suggests that the non-claims period be extended from six months to two years. It takes the State time after a Medicaid recipient passes. When a deceased member is identified, we mail out a questionnaire to determine what the assets were at the time of the passing. There have to be several letters in order to get about a 50 percent response rate. The case workers have to search for assets with the appraiser's office, register of deeds, and other such places. There are approximately 7,000 individuals who die annually, which means they have approximately 600 cases per month to address, and may have as many as 2,000 to 3,000 active cases at a given time. Mr. Sherber covered several requirements in the bill that would aid in recovering money. Ultimately, if the provisions of the bill are adopted, he estimates the State's general fund annual increase could be between \$780,000 to \$1.5 million the first year. This is equivalent to fifteen to twenty-five percent increase over current estate recovery levels. (Attachment 2)

Ron Smith testified in support of **HB 2742** advising he is part of a four-partner law firm that is well established in Central Kansas. Their firm has handled many probate and trust cases over time. Part of his probate practice is working with the Kansas Department of Health and Environment-Division of Health Care Finance and Medicate recovery cases. He works with Ben Sherber in most counties in Western Kansas. Mr. Smith stated he believes the recovery program, when understood, is fair. It is in the last years and months of life that, medically, are the most expensive. Taxpayers are called to assist needy persons in their last months of life, financing medical needs with Medicaid, especially nursing home care. In return, the federal government allows Medicaid to recoup costs from the remaining assets of the recipient. Mr. Smith recommended the most important definition in this bill is the process in the sentence at Page 10, line 22, defining what constitutes the medical assistance estate, as this is where one expands and contracts the limits of the estate recovery effort. He suggested if the Committee does anything

Continuation Sheet

Minutes of the HOUSE JUDICIARY Committee at 3:30 PM on Monday, March 5, 2012 in 346-S of the Capitol.

with the section, it should expand it and not let anyone talk the Committee into removing or limiting portions of that definition because it strikes squarely at the efforts to recoup the Medicaid funds. Mr. Smith discussed the five major reform items in the bill: the time to file an estate as a creditor is expanded from 6 months to two years; the state is allowed to use the Small Estates Affidavit, 59-1507b; there is a mandatory notice of all probates to the state that includes notifications of trusts; you are asked to adopt a method to calculate the value of a life estate; you are asked to require that the state be notified when the settler of a trust dies. (Attachment 3)

Lance A. Weeks testified in support of **HB 2742** stating in addition to practicing law in the areas of probate administration, trust administration, estate planning, and taxation, he has been appointed as the administrator of approximately 15 probate estates at the request of the Kansas Estate Recovery Contractor. He was asked to testify by the Kansas Estate Recovery Contractor, especially as to how the bill addresses problems he has observed in his role as administrator of estates. Although not necessarily a proponent of a departure from the six-month time frame, he has observed that the time frame presents a significant challenge to the recovery program in terms of referral of cases to prospective administrators. One possibility he thinks might make recovery easier would be to amend K.S.A. 39-709 (g) (2) to provide that the State of Kansas has a lien that arises at death against the real estate owned by a deceased recipient of medical assistance or the surviving spouse of a deceased medical assistance recipient rather than a mere claim. The imposition of such a lien would have the effect of protecting the ability of the State of Kansas to recover medical assistance without the need to alter the current time frames for estates that do not have issues with claims for medical assistance. Mr. Weeks discussed several other observations he has observed with the Committee, which are included in his written testimony. (Attachment 4)

Brian Vazquez testified as neutral on **HB 2742** stating he wanted to share the reason for Medicaid. Medicaid was developed as a compromise that was offered by Representative Wilbur Mills, when he came up with a three-layer cake in 1964 and 1965. He developed a program where you could have hospital bills and medical bills paid by insurance that became Medicare Part A and Part B, and finally he proposed a safety net, which became Medicaid. Medicaid is Welfare that is designed to help individuals who are having trouble meeting the payments of their medical bills. What has happened since 1965, when Medicaid was started, is that more and more people are having trouble paying their medical bills. Representative Bowman talked about when he went through his process, his parents had to go through and use most of their resources before they became eligible. As it stands right now, under our present system, Medicaid does allow beneficiaries with certain types of assets to qualify for Medicaid while retaining those assets. What happened in 1993 was the federal government mandated estate recovery program for participating states. Medicaid estate recovery was a way to establish some fundamental fairness for people who have no resources or have depleted their resources verses others who

Continuation Sheet

Minutes of the HOUSE JUDICIARY Committee at 3:30 PM on Monday, March 5, 2012 in 346-S of the Capitol.

have used the law, but nonetheless retained resources, while the state and federal government had to engage in payment for their medical bills. That is basically the point behind the estate recovery and is mentioned in the written testimony.

Mr. Vazquez had the honor of being the first attorney hired by the Kansas Department of Rehabilitation Services in 1992 to go out and develop the estate recovery process in the unit. It was an interesting few months. In the last 10 years alone the State has collected over \$67 million dollars. If someone had said in 1992 that at the time of passing of an individual on a Welfare program, the State would be able to collect over \$9 million from those individuals, he is not sure he would have believed him. He urged passage of this bill. (Attachment 5)

Chairman Kinzer suggested that, given the complexity and importance of this issue, he is appointing a Subcommittee, with Representative Brookens as Chair, and Representative Rychman and Representative Bruchman to the Subcommittee, appointing Representative Kuether as ranking Minority Leader and Representative Meier. The Subcommittee will have broad discretion in determining potential changes or ways to accomplish the issue before the Committee takes action. Each of the conferees after Representative Rychman, had suggestions as to methods or ways to move forward. Chairman Kinzer asked that if there were suggestions from the proponents or opponents that they be given to the chief researcher, Lauren Douglass, who would then share them with the Subcommittee.

The next hearing is scheduled for March 6, 2012.

Chairman Kinzer adjourned the meeting at 5:07 p.m.