

MINUTES

SPECIAL COMMITTEE ON JUDICIARY

October 24-25, 2002
Room 313-S—Statehouse

Members Present

Senator John Vratil, Chair
Representative Michael O'Neal, Vice Chair
Senator Mark Gilstrap
Senator Lana Oleen
Senator Dwayne Umbarger
Representative Becky Hutchins
Representative Tim Owens
Representative Rick Rehorn
Representative Roger Toelkes

Staff Present

Mike Heim, Kansas Legislative Research Department
Jerry Ann Donaldson, Kansas Legislative Research Department
Jill Wolters, Revisor of Statutes Office
Cindy O'Neal, Committee Secretary

Conferees

Barbara Hinton, Legislative Post Auditor
Senator Derek Schmidt
John Campbell, Senior Deputy, Office of Attorney General
Jerry Slaughter, Kansas Medical Society
Tom Bell, Kansas Hospital Association
Bob Day, Department of Social and Rehabilitation Services
Bob Eye, Kansas Trial Lawyers Association
Roger Werholtz, Acting Secretary of Corrections
Senator Jay Emler
Professor Linda Elrod, Washburn Law School
Judge Patrick McAnany, Chief Judge, 10th Judicial District, Johnson County
Rodney Durr, Wichita
Allan Hazlett, Topeka Adoption Attorney
Jim Ruble, Lindsborg

**Thursday, October 24
Morning Session**

Chairman Vratil called the meeting to order.

Senator Gilstrap made the motion to approve the Committee minutes from the September 24 and 25, 2002 meeting. Representative Toelkes seconded the motion. The motion carried.

Topic No. 8—Fraudulent Medicaid Claims

Barbara Hinton, Legislative Post Auditor, covered the findings, conclusions and recommendations from the performance audit, *Medicaid Cost Containment: Controlling Fraud and Abuse*. (A copy of the report can be obtained at Legislative Division of Post Audit, 800 SW Jackson, Suite 1200, Topeka, Kansas.)

The Department of Social and Rehabilitation Services (SRS) is responsible for administering and supervising the Medicaid program in Kansas. A common estimate is that nationally 10 percent of all Medicare and Medicaid payments are fraudulent. If this is indeed the case, about \$138 million of the state's Medicaid claims are potentially fraudulent.

Types of fraudulent or abusive practices include:

- Billing for phantom patient visits;
- Billing for goods or services that were not provided;
- Inflating prices for goods or services that were provided;
- Billing used items as “new”; and
- Billing for more hours than they actually worked.

SRS contracted with Blue Cross/Blue Shield as its fiscal agent to process Medicaid claims and to review and to look for potential fraudulent claims. The federal government required each state to have a “surveillance and utilization review” (SUR) function to help identify potential fraud and abuse cases within the Medicaid program. Blue Cross/Blue Shield also does this review.

The audit found:

- SUR unit generally does not follow up on computer-generated information that could lead to fraudulent or abusive billing practices;
- Most of the follow up work done by SUR unit does not focus on the highest risk or most lucrative areas;

- SUR unit does not do much additional analysis outside the standard reports; and
- SRS has not provided sufficient guidance and direction to SUR Unit; and
- The Attorney General's Medicaid Fraud and Abuse Division is underutilized (in 2000 they only had 13 cases, in 2001 there were 10).

The Audit recommended:

- Appointing a strong advocate, who will exercise "ownership" of meeting program goals;
- Strengthen communication channels between SRS and the SUR units;
- Establish clear and quantifiable performance expectations and measurements jointly agreed upon between the Contractor and SRS;
- Ensure positive oversight of contractor activities;
- Structure leadership involvement to clearly articulate the goals of the Kansas Medicaid program along with the associated customer benefits;
- Create and properly use incentives for the contractor to do more with less; and
- Suggest thoughtful and creative new processes, procedures, and customer facing features.

Senator Derek Schmidt noted that he had requested the drafting of SB 535 for the 2002 Legislative Session. He served on the Legislative Post Audit Committee and requested the bill to address the concerns of the audit.

John Campbell, Senior Deputy, Office of Attorney General, informed the members that the Attorney General's office deals only with provider fraud. He disagreed with the Post Audit report which suggested there may be as much as \$27 million to \$138 million of fraud in Kansas' Medicaid program. He suggested that if the Committee wanted to expand the use of the Attorney General's office, the office should encompass any false claims filed with the state ([Attachment 1](#)).

Jerry Slaughter, Kansas Medical Society, explained that the reimbursement rate to doctors is extremely low when it comes to Medicaid claims. They receive 10-30 percent of the bill for the services they perform. The last adjustment in fees for reimbursements happened in 1976. He suggested that it might be time to consider increasing those reimbursement percentages.

He opposed SB 535 because it would send the message that physicians are “bad guys.” Anyone who has a complaint against a doctor can notify the state Board of Healing Arts and the Board will look into the complaint. He said there is already adequate protection in the Federal False Claims Act ([Attachment 2](#)).

Tom Bell, Kansas Hospital Association, suggested the Committee needs to consider just how much fraud and abuse there really is in Kansas and what does SB 535 add that is currently not covered by the Federal False Claims Act and current state laws ([Attachment 3](#)).

Bob Day, SRS, informed the Committee that the Post Audit report was not correct in its claim that 10 percent of all medical claims are fraudulent. He said most large fraud claims are from drug companies and hospitals ([Attachment 4](#)). He said there was no evidence to support that percentage in Kansas or elsewhere and that it was an error that continues to be repeated without documentation.

The Committee meeting recessed at 12:00 p.m.

Afternoon Session

Bob Eye, Kansas Trial Lawyers Association, asked the Committee to amend SB 535 by including all state expenditures which are subject to false or fraudulent claims and allow a whistle blower provision. He opposed allowing the Attorney General’s Office being the sole plaintiff in bringing a civil action ([Attachment 5](#)).

The hearing on Topic No. 8—Fraudulent Medicaid Claims was closed.

Topic No. 2—Drug Court

Roger Werholtz, Acting Secretary of Corrections, gave a presentation on the current prison capacity; projected prison bed demands in the future; and the costs of building two new prisons, staffing them, and the cost per inmate ([Attachment 6](#)).

Staff provided the Committee with information regarding the total grant amount awarded by the Violent Offender Incarceration Act/Truth in Sentencing (VOI/TIS) between 1996-2001 as \$27,245,469. The grant has been used for prison expansion, drug testing, hair specimen testing, and day reporting centers among other things ([Attachment 7](#)).

The Committee directed staff to draft a letter on behalf of the Committee to the Legislative Coordinating Council to request permission to write to the Kansas Congressional Delegation requiring them to support the re-authorization of grant moneys under the VOI/TIS program and to amend the to allow the use of the moneys to be spent on contract beds in state prison facilities in other states and in local jails.

Topic No. 3—Licensure of Bail Bondsmen

Kathy Porter, Office of Judicial Administration, reported she had sent an e-mail survey to the courts to see if the courts had any cases involving property bonds where the bonds had been forfeited and sufficient security did not exist to pay out the bond. No district court in Kansas responded with an account of such case ([Attachment 8](#)).

The Committee meeting adjourned at 3:00 p.m.

Friday, October 25 Morning Session

Vice Chairman O’Neal called the meeting to order.

Topic Nos. 4 and 9—Adoption and Natural Father Rights

Senator Jay Emler said he had requested SB 585 to protect children up for adoption and their adoptive parents. The bill would have required the putative father, within 72 hours after the birth of the child, to register in order to receive notice that the child is going to be placed for adoption.

Judge Patrick McAnany, Chief Judge, 10th Judicial District, Johnson County, informed the Committee that there are three types of termination of parental rights:

- Signed consent of both biological parents;
- Relinquishment of the child to an agency; and
- Involuntary severance of parental rights.

Professor Linda Elrod, Washburn Law School, encouraged the Committee to look at the Uniform Parentage Act 2000 that the National Conference of Commissioners on Uniform State Law has recommended. The act has a putative father registry ([Attachment 9](#)).

She was not sure that a registry of paternity was even needed. Fathers who assume the responsibility of a parent should be given those rights as a parent. The question is really, what is the best way to show that they have assumed the responsibility of a parent. The courts have done a good job of determining whom a responsible parent is.

Rodney Durr, Wichita, informed the Committee that he adopted two children; one adoption occurred in Oklahoma and the other in Kansas. Oklahoma requires that a father must financially support the birth mother for the nine months of pregnancy in order to have any parental rights. In Kansas, the father must financially support the mother for six months

of the pregnancy after she has informed him, or his parental rights can be severed. He suggested that the burden be on the biological father to find out when a pregnancy exists. He also requested that hospitals should be required to release the baby to the person who has adopted the child or released to the attorney and that a power of attorney signed by the mother should be sufficient (Attachment 10).

Allan Hazlett, Topeka Adoption Attorney, said the proposed putative fathers' registry would just add another layer to go through. Good adoption practices require publication to provide a level of protection to the adoptive parents. Each county in Kansas does adoptions in different ways. He provided a proposed revision that will balance the responsibilities of both biological parents and adoptive parents (Attachment 11).

Jim Ruble, Lindsborg, told the Committee his story of adopting children in Kansas and how he had to pay for an attorney for the biological father when the biological father showed up at the court hearing where the adoption was to take place (Attachment 12).

Martin Bauer, Attorney, did not appear before the Committee but provided written testimony (Attachment 13).

Topic No. 3—Licensure of Bail Bondsmen

The Committee discussion focused on the testimony that the courts do not have a problem with the pocket bondsmen but do with insurance companies who bond. They recommended no action be taken due to the fact there was no evidence showing a problem exists.

Topic No. 7—Licensure of Private Security Guards

Members expressed concern that there was no state licensure of private security guards who carry weapons. They believed that SB 456 had some merit but suggested that it needs more work. Of concern was also the lack of training for the valuable service that they provide. The Committee encouraged local communities to come up with their own regulations with regard to licensure of private security guards.

Topic No. 2—Drug Courts and Alternative Sanctions for Drug Offenders

The Committee acknowledged the value of drug courts and encouraged the 2003 Legislature, as funds are available, to create pilot programs in one or more of the larger district courts. The Committee also encouraged the district courts to consider starting their own programs by applying for federal grants.

The Committee agreed to introduce the Sentencing Commission recommendations on alternative sanctions for drug offenders.

Topic No. 8—Fraudulent Medicaid Claims

The Committee concluded that there probably was not a major Medicaid fraud problem in the state. They questioned why the Post Audit Report had not included information regarding any complaints that the Board of Healing Arts may have received regarding fraudulent billing practices. The Committee directed staff to contact the Board of Healing Arts, Kansas Department of Health and Environment, and the Board of Nursing to see if they have received any Medicaid complaints.

Topic Nos. 4 and 9—Adoption and Natural Father Rights

The Committee encouraged the Legislature to look at the 2000 Uniform Parentage Act and introduce the Act with the understanding that there might be some further amendments coming from the Uniform Law Commission. They also invited any adoption attorney to provide a list of suggested amendments that should be addressed.

The Committee meeting adjourned at 12:00 p.m.

Prepared by Cindy O'Neal
Edited by Mike Heim

Approved by Committee on:

January 3, 2003